

1 H.513

2 Introduced by Representatives Deen of Westminster and Klein of East

3 Montpelier

4 Referred to Committee on

5 Date:

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

7 resources; environmental permit appeals and enforcement;

8 environmental division

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

10 with an environmental review board that would hear the appeals and

11 enforcement cases related to state environmental permits that currently are

12 heard by the environmental division of the superior court. The new board

13 would have the administrative oversight and rulemaking authority for the Act

14 250 program presently assigned to the natural resource board's land use panel.

15 The rulemaking authority of the natural resources board's water resources

16 panel would be transferred to the secretary of natural resources. The

17 environmental division of the superior court would continue to hear appeals

18 and enforcement cases related to local land use bylaws, except that an appeal

19 of a local land use decision would be to the environmental review board if the

20 underlying project is also subject to state environmental permit requirements.

1 An act relating to an environmental review board that hears appeals and
2 enforcement actions concerning state environmental permits

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

4 * * * Environmental Review Board * * *

5 Sec. 1. REPEAL

6 10 V.S.A. chapter 220 (consolidated environmental appeals) is repealed.

7 Sec. 2. 10 V.S.A. chapter 219 is added to read:

8 CHAPTER 219. STATE ENVIRONMENTAL REVIEW BOARD; STATE

9 ENVIRONMENTAL PERMIT APPEALS

10 Subchapter 1. General Provisions

11 § 8401. PURPOSE

12 It is the purpose of this chapter to:

13 (1) create an administrative board to hear and decide enforcement
14 actions under chapter 201 of this title and appeals under this chapter with
15 respect to state environmental permits;

16 (2) consolidate appeal routes for acts or decisions of the secretary and
17 the district commission;

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

21 (4) encourage people to get involved in the Act 250 permitting process
22 at the initial stages of review by a district commission by requiring

1 participation as a prerequisite for an appeal of a district commission decision to
2 the environmental review board; and

3 (5) provide clear appeal routes for acts and decisions of the secretary.

4 § 8402. DEFINITIONS

5 As used in this chapter:

6 (1) “Board” means the environmental review board, except when used
7 in section 8415 of this title.

8 (2) “District commission” means a district commission established
9 under chapter 151 of this title.

10 (3) “Environmental review board” means the Vermont environmental
11 review board established under section 8403 of this title.

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

16 (5) “Person aggrieved” means a person who alleges an injury to a
17 particularized interest protected by the provisions of law listed in section 8410
18 of this title, attributable to an act or decision by a district coordinator, district
19 commission, the secretary, or the environmental review board that can be
20 redressed by the board or the supreme court.

1 (6) “Secretary” means the secretary of the agency of natural resources or
2 the secretary’s duly authorized representative. For the purposes of this chapter,
3 “secretary” shall also mean the commissioner of the department of
4 environmental conservation, the commissioner of the department of forests,
5 parks and recreation, and the commissioner of the department of fish and
6 wildlife with respect to those statutes that refer to the authority of that
7 commissioner or department.

8 Subchapter 2. Environmental Review Board

9 § 8403. VERMONT ENVIRONMENTAL REVIEW BOARD

10 (a) Creation. A Vermont environmental review board is created. The
11 board shall consist of a chair, two members, and two alternate members.

12 (b) Appointment. The chair, members, and alternate members shall be
13 nominated, appointed, and confirmed in the manner of a superior judge.

14 (1) No member shall be required to be admitted to the practice of law in
15 this state. However, in making appointments, the governor shall seek
16 candidates with experience, expertise, or skills relating to the environment,
17 land use, or applicable law.

18 (2) Initial appointments to the board shall be made so that the terms of
19 the chair and the members expire in a staggered manner. The initial
20 appointment of the chair shall be for a term of four years. The initial
21 appointment of one of the members and one of the alternate members shall be

1 for a term of two years and the initial appointment of the other member and
2 other alternate member shall be for a term of six years.

3 (c) Terms; vacancy; succession. The term of each appointment subsequent
4 to the initial appointments described in subdivision (b)(2) of this section shall
5 be six years. 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) Use of alternates. When a member of the board is unavailable to hear a
9 case, the chair may appoint an alternate member to hear the case.

10 (e) Disqualification; conduct.

11 (1) The provisions of 12 V.S.A. § 61 (disqualification for interest) shall
12 apply to the chair and the members of the board.

13 (2) No person who receives or during the previous two years has
14 received a significant portion of his or her income directly or indirectly from
15 permit holders or applicants for a permit under chapter 47 of this title may hear
16 appeals from acts or decisions of the secretary relating to permits issued under
17 chapter 47.

18 (3) The chair and each member of the board shall conduct the affairs of
19 his or her office in such a manner as to instill public trust and confidence and
20 shall take all reasonable steps to avoid any action or circumstance that might
21 result in any one of the following:

1 (A) Undermining his or her independence or impartiality of action.

2 (B) Taking official action on the basis of unfair considerations.

3 (C) Giving preferential treatment to any private interest on the basis
4 of unfair considerations.

5 (D) Giving preferential treatment to any family member or member
6 of his or her household.

7 (E) Using his or her office for the advancement of personal interest or
8 to secure special privileges or exemptions.

9 (F) Adversely affecting the confidence of the public in the integrity
10 of the environmental review board.

11 (4) A person may request that the chair or other member of the board
12 recuse himself or herself from a matter in which the person has party status.
13 Should the chair or other member determine that recusal is not warranted, the
14 party may seek review of that determination by the other members of the
15 board. The chair or other member whose recusal is sought shall not participate
16 as a member of the board in the review of his or her determination. Alternate
17 members who are not recused shall participate in the review as necessary to
18 ensure that the board has a quorum and can make a decision by a majority
19 vote. The board may remove the chair or other member whose recusal is
20 sought under this subdivision from a matter pending before the board if the

1 board determines that removal is necessary to ensure compliance with
2 subsection (a) of this section.

3 (5) For one year after leaving office, a former appointee to the
4 environmental review board shall not, for pecuniary gain:

5 (A) Be an advocate before the board on any matter; or

6 (B) Be an advocate before any other public body or the general
7 assembly or its committees regarding any matter in which, while an appointee,
8 he or she exercised any official responsibility or participated personally and
9 substantively.

10 (f) Removal for cause. Notwithstanding 3 V.S.A. § 2004 or any other
11 provision of law, the chair and members of the board may be removed only for
12 cause.

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

19 (h) Completion of case. A case shall be deemed completed when the board
20 enters a final decision even though that decision is appealed to the supreme
21 court and remanded by that court.

1 (i) Chair; general charge. The chair, subject to the direction of the board,
2 shall have general charge of the offices and employees of the board, including
3 those employees assigned to assist the district commissions, and the offices of
4 the district commissions.

5 (j) The annual salary of the chair and the members of the board, except
6 alternate members, shall be the same as fixed for each superior judge under
7 32 V.S.A. § 1003. The alternate members shall receive reimbursement at the
8 per diem rate set in 32 V.S.A. § 1010 plus mileage and actual and necessary
9 expenses.

10 § 8404. POWERS OF SINGLE BOARD MEMBER OR OTHER OFFICER
11 OR EMPLOYEE

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

15 (b) A hearing officer may hold any hearing in any matter within the
16 jurisdiction of the board. Hearings conducted by a hearing officer shall be in
17 accordance with 3 V.S.A. §§ 809–814. A hearing officer may administer oaths
18 and exercise the powers of the board necessary to hear and determine a matter
19 for which the officer was appointed.

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

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

3 (d) At least 10 days prior to a hearing before the board or a hearing officer,
4 the board shall give written notice of the time and place of the hearing to all
5 parties to the case and shall indicate the name and title of the person designated
6 to conduct the hearing.

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

10 § 8405. COURT OF RECORD; PROCESS

11 (a) The board shall have the powers of a court of record in the
12 determination and adjudication of all matters within its jurisdiction. It may
13 render judgments and enforce the same by any suitable process issuable by
14 courts in this state. An order issued by the board on any matter within its
15 jurisdiction shall have the effect of a judicial order.

16 (b) All processes issued by the board shall state the time and place of return
17 in those cases where return is to be made to the board. Notices and other
18 processes issued by the board shall be served on all parties personally or by
19 first class mail, except that the board may direct that service be made by
20 registered or certified mail. If the whereabouts of a person are unknown or if
21 the number of parties or interested persons, as the case may be, is so great that

1 personal service or service by mail is impracticable, service may be made by
2 publication.

3 (c) Except as provided in subsections (d) and (e) of this section, the board
4 shall give 10 days' notice of all hearings.

5 (d) A prehearing or procedural conference may be held on written notice
6 issued no less than 24 hours in advance, unless the prehearing or procedural
7 conference is need to respond to an unforeseen occurrence or condition
8 requiring immediate attention by the board or hearing officer, in which case
9 notice shall be given as soon as possible under the circumstances. Unless
10 otherwise ordered by the board, all nonevidentiary hearings may be conducted
11 by telephone or video conferencing using an audio or video record.

12 (e) An evidentiary hearing, once commenced upon proper notice, may be
13 continued to a subsequent date upon any reasonable notice. An evidentiary
14 hearing shall be held in the county in which all or a portion of the land which
15 is the subject of the case is located, unless the parties agree to another location.

16 (f) The board shall publish and maintain all notices on its website for no
17 less than the period that applies to such notice (e.g., 10 days in advance of the
18 noticed hearing). At the time the board issues notice, it shall provide a copy of
19 the notice to an editor, publisher, or news director of a newspaper or radio
20 station serving the area of the state in which the subject of the hearing is
21 located.

1 (g) The forms, pleadings, and rules of practice and procedure before the
2 board shall be prescribed by it. The board shall ensure that the rules provide
3 for each of the following:

4 (1) Expeditious proceedings that give due consideration to the needs of
5 unrepresented litigants.

6 (2) The ability of the board to hold prehearing conferences by telephone.
7 If a party objects to a telephonic prehearing conference, the board may require
8 a personal appearance.

9 (3) The use of scheduling orders to provide for that amount of discovery
10 necessary for a full and fair determination of the proceeding.

11 (4) The appropriate use of site visits by the board in rendering a
12 decision.

13 (h) In a proceeding before the board under this chapter or chapter 201 of
14 this title, each party shall provide all other parties with all written statements
15 and information in the possession, custody, or control of the party relevant to
16 the proceeding, including any technical studies, tests, and reports; maps;
17 architectural and engineering plans and specifications; drawings; graphs;
18 charts; photographs; data compilations from which information can be
19 obtained; the names and addresses of the party's witnesses; and any other
20 information that the board deems necessary to a full and fair determination of
21 the proceeding.

1 (i) The board shall hear appeals on all acts or decisions specified in section
2 8410 of this title and make its findings of fact and conclusions of law.

3 § 8406. EXPERTS AND PERSONNEL

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

10 § 8407. PARTICULAR PROCEEDINGS; PERSONNEL

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

14 (A) to assist the board in any proceeding before it under this chapter
15 or chapter 201 of this title;

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

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

20 (2) The personnel authorized by this section shall be in addition to the
21 regular personnel of the board or other state agencies and, in the case of other

1 state agencies, may be retained only with the approval of the governor and
2 after notice to the applicant. The board shall fix the amount of compensation
3 and expenses to be paid such additional personnel.

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

8 § 8408. ASSESSMENT OF COSTS

9 (a) The board may allocate to an applicant the portion of its expenses
10 incurred by retaining additional personnel for a proceeding. On petition of an
11 applicant to which costs are proposed to be allocated, the board shall review
12 and determine, after opportunity for hearing, the necessity and reasonableness
13 of those costs, having due regard for the size and complexity of the project,
14 and may amend or revise an allocation. Prior to allocating costs, the board
15 shall make a determination of the purpose and use of the funds to be raised
16 under this section, identify the recipient of the funds, provide for allocation of
17 costs among applicants to be assessed, indicate an estimated duration of the
18 proceedings, and estimate the total costs to be imposed. With the approval of
19 the board, estimates may be revised as necessary. From time to time during
20 the progress of the work, the board shall render to the applicant detailed
21 statements showing the amount of money expended or contracted for in the

1 work of additional personnel, which statements shall be paid into the state
2 treasury at the time and in the manner as the board may reasonably direct.

3 (b) All payments for costs allocated pursuant to this section shall be
4 deposited into the fund created under section 6029 of this title.

5 § 8409. INTERGOVERNMENTAL COOPERATION

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

14 Subchapter 3. Appellate and Original Jurisdiction of Board

15 § 8410. APPELLATE JURISDICTION OF BOARD

16 (a) This chapter shall govern all appeals of an act or decision of the
17 secretary, excluding appeals of enforcement actions under chapters 201 and
18 211 of this title and rulemaking, under:

19 (1) The following provisions of this title:

20 (A) chapter 23 (air pollution control).

21 (B) chapter 50 (aquatic species control).

- 1 (C) chapter 41 (regulation of stream flow).
- 2 (D) chapter 43 (dams).
- 3 (E) chapter 47 (water pollution control).
- 4 (F) chapter 48 (groundwater protection).
- 5 (G) chapter 53 (beverage containers; deposit-redemption system).
- 6 (H) chapter 55 (aid to municipalities for water supply, pollution
7 abatement, and sewer separation).
- 8 (I) chapter 56 (public water supply).
- 9 (J) chapter 59 (underground and aboveground liquid storage tanks).
- 10 (K) chapter 64 (potable water supply and wastewater system permit).
- 11 (L) section 2625 (regulation of heavy cutting).
- 12 (M) chapter 123 (protection of endangered species).
- 13 (N) chapter 159 (waste management).
- 14 (O) chapter 37 (wetlands protection and water resources
15 management).
- 16 (P) chapter 166 (collection and recycling of electronic waste).
- 17 (Q) chapter 164A (collection and disposal of mercury-containing
18 lamps).
- 19 (2) 29 V.S.A. chapter 11 (management of lakes and ponds).
- 20 (3) 24 V.S.A. chapter 61, subchapter 10 (relating to salvage yards).

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

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

5 (d) This chapter shall govern all appeals from an act or decision of the
6 environmental review board under this chapter.

7 (e) This chapter shall not govern appeals from enforcement actions under
8 chapters 201 and 211 of this title or from rulemaking decisions by the board or
9 the secretary.

10 (f) An appeal of an act or decision of an appropriate municipal panel under
11 24 V.S.A. chapter 117 shall be to the board if the act or decision pertains to
12 land development, as defined in 24 V.S.A. § 4303(10), that requires a permit,
13 certificate, or other approval from the agency of natural resources or a district
14 commission under a statute listed in subsections (a) or (b) of this section. The
15 provisions of 24 V.S.A. §§ 4471 (appeals to environmental division) and
16 4471a(b) through (g) (environmental division) shall apply to such an appeal,
17 except that the appeal shall be before the board and may be consolidated with
18 other appeals before the board pursuant to subsection 8411(f) of this title.

19 § 8411. APPEALS TO THE BOARD

20 (a) Act 250 and agency appeals. Any person aggrieved by an act or
21 decision of the secretary, a district commission, or a district coordinator under

1 the provisions of law listed in section 8410 of this title may appeal to the
2 environmental review board within 30 days of the date of the act or decision,
3 except for an act or decision of the secretary governed by section 8415 of this
4 title (renewable energy plants; telecommunications facilities).

5 (b) Notice of the filing of an appeal.

6 (1) On filing an appeal from an act or decision of the district
7 commission, the appellant shall notify all parties who had party status as of the
8 end of the district commission proceeding and all friends of the commission
9 that an appeal is being filed. In addition, the appellant shall publish notice not
10 more than 10 days after providing notice as required under this subsection, at
11 the appellant's expense, in a newspaper of general circulation in the area of the
12 project which is the subject of the decision.

13 (2) On the filing of an appeal from the act or decision of the secretary
14 under the provisions of law listed in section 8410 of this title, the appellant
15 shall provide notice of the filing of an appeal to the following persons: the
16 applicant before the agency of natural resources, if other than the appellant; the
17 owner of the land where the project is located if the applicant is not the owner;
18 the municipality in which the project is located; the municipal and regional
19 planning commissions for the municipality in which the project is located; if
20 the project site is located on a boundary, any adjacent Vermont municipality
21 and the municipal and regional planning commissions for that municipality;

1 any state agency affected; the solid waste management district in which the
2 project is located, if the project constitutes a facility pursuant to subdivision
3 6602(10) of this title; all persons required to receive notice of receipt of an
4 application or notice of the issuance of a draft permit; and all persons on any
5 mailing list for the decision involved. In addition, the appellant shall publish
6 notice not more than 10 days after providing notice as required under this
7 subsection, at the appellant's expense, in a newspaper of general circulation in
8 the area of the project which is the subject of the decision.

9 (c) Requirement that aggrieved parties participate before the district
10 commission.

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

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

15 (B) the person was granted party status by the district commission
16 pursuant to subdivision 6085(c)(1)(E), participated in the proceedings before
17 the district commission, and retained party status at the end of the district
18 commission proceedings. In addition, the person may only appeal those issues
19 under the criteria with respect to which the person was granted party status.

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

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

6 (B) the decision being appealed is the granting or denying of party
7 status; or

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

10 (d) Act 250 jurisdictional opinions.

11 (1) The appellant shall provide notice of the filing of an appeal to each
12 person entitled to notice under subdivisions 6085(c)(1)(A) through (D) of this
13 title and to each person on an approved 6085(c)(1)(E) list.

14 (2) Failure to appeal within the time required under subsection (a) of
15 this section shall render the jurisdictional opinion the final determination
16 regarding jurisdiction under chapter 151 of this title unless the opinion was not
17 properly served on persons listed in subdivisions 6085(c)(1)(A) through (D) of
18 this title and on persons on a 6085(c)(1)(E) list approved under subsection
19 6007(c) of this title. Any person listed in subdivisions 6085(c)(1)(A) through
20 (D) of this title or on an approved 6085(c)(1)(E) list who is not initially served

1 as required may appeal the jurisdictional opinion at any time if the person is
2 never served or within 30 days from the date the person has been served.

3 (e) Stays.

4 (1) The filing of an appeal shall automatically stay the act or decision in
5 the following situations:

6 (A) Acts or decisions involving stream alteration permits or shoreline
7 encroachment permits issued by the secretary.

8 (B) The denial of party status by a district commission.

9 (2) On petition by a party or upon its own motion for a stay of an act or
10 decision, the board shall perform the initial review of the request and may
11 grant a stay. Any decision under this subsection to issue a stay shall be subject
12 to appeal to the supreme court according to the Rules of Appellate Procedure.

13 (f) Consolidated appeals. The board may consolidate or coordinate
14 different appeals where those appeals all relate to the same project.

15 (g) Review de novo. The board, applying the substantive standards that
16 were applicable to the tribunal appealed from, shall review de novo those
17 issues which have been appealed, with the burden of proof on the appellant. In
18 making its decision, the board shall apply its independent judgment to the
19 record below and may allow additional evidence as provided in this subsection.
20 The record on appeal shall consist of all documents, materials, and testimony
21 reviewed or considered by the tribunal appealed from except that the board

1 may allow a party to present additional evidence on application by the party
2 and a determination by the board that the new evidence is material and good
3 cause exists for the party's failure to present the additional evidence to the
4 tribunal appealed from.

5 (h) Deference to agency technical determinations. In the adjudication of
6 appeals relating to land use permits under chapter 151 of this title, technical
7 determinations of the secretary shall be accorded the same deference as they
8 are accorded by a district commission under subsection 6086(d) of this title.

9 (i) Appeals of authorizations or coverage under a general permit. Any
10 appeal of an authorization or coverage under the terms of a general permit shall
11 be limited in scope to whether the permitted activity complies with the terms
12 and conditions of the general permit.

13 (j) Limitations on appeals. Notwithstanding any other provision of this
14 section:

15 (1) there shall be no appeal from a district commission decision when
16 the commission has issued a permit and no hearing was requested or held or no
17 motion to alter was filed following the issuance of an administrative
18 amendment; and

19 (2) if a district commission issues a partial decision under subsection
20 6086(b) of this title, any appeal of that decision must be taken within 30 days
21 of the date of that decision.

1 (k) Representation. The secretary may represent the agency in all appeals
2 under this section. If more than one state agency either appeals or seeks to
3 intervene in an appeal under this section, only the attorney general may
4 represent the interests of the state in the appeal.

5 (l) Precedent. Prior decisions of the water resources board, the
6 environmental board, the waste facilities panel, and the environmental court on
7 matters arising under the chapters listed in section 8410 of this title shall be
8 given the same weight and consideration as prior decisions of the board.

9 (m) Intervention. Any person may intervene in a pending appeal if that
10 person:

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

13 (2) is a party by right;

14 (3) is a person aggrieved, as defined in this chapter; or

15 (4) meets the standard for intervention established in the Vermont Rules
16 of Civil Procedure.

17 (n) With respect to review of an act or decision of the secretary pursuant to
18 3 V.S.A. § 2809, the board may reverse the act or decision or amend an
19 allocation of costs to an applicant only if the board determines that the act,
20 decision, or allocation was arbitrary, capricious, or an abuse of discretion. In

1 the absence of such a determination, the board shall require the applicant to
2 pay the secretary all costs assessed pursuant to 3 V.S.A. § 2809.

3 § 8412. ORIGINAL JURISDICTION OF BOARD

4 (a) The environmental review board shall have original jurisdiction over
5 petitions for revocation under section 6090 of this title.

6 (b) On motion of a person or on its motion, the board may exercise original
7 jurisdiction over any matter listed in section 8410 of this title unless appeal of
8 the act or decision is governed by section 8415 of this title (renewable energy
9 plants; telecommunications facilities).

10 (1) The board may exercise such original jurisdiction over a matter
11 described in subsection 8410(f) of this title (appeal from appropriate municipal
12 panel) only on consent of the municipality.

13 (2) The board may exercise original jurisdiction under this subsection
14 only on a determination that the decision will concern a matter of significant
15 public interest. For the purpose of this subdivision, a matter of significant
16 public interest is a matter that meets at least two of the following criteria:

17 (A) The matter will have an environmental or economic impact in
18 more than one municipality.

19 (B) The matter involves a development, as that term is defined under
20 section 6001 of this title, that is located in more than one municipality.

21 (C) The matter is likely to come under significant public scrutiny.

1 (D) The matter is likely to involve questions of fact or law the
2 determination of which will have significant precedential effect.

3 (3) A decision by the board to exercise original jurisdiction shall transfer
4 jurisdiction over the matter from the secretary or district commission to the
5 board.

6 (c) The jurisdiction provided by this section to the board shall be in
7 addition to such original jurisdiction as is elsewhere provided by law.

8 § 8413. FEES

9 (a) All persons filing an appeal or initiating a matter within the board's
10 original jurisdiction under this chapter shall pay a fee of \$250.00 plus any
11 associated publication costs. The board may waive the fee or publication costs
12 if the board finds that the appellant or initiating party is unable to pay the fee
13 or publication costs. The fee of \$250.00 shall not apply to appeals or other
14 matters brought before the board under this chapter in the name of the state by
15 public officials authorized to do so.

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

18 § 8414. APPEALS TO THE SUPREME COURT

19 (a) Any person aggrieved by an act or decision of the environmental review
20 board pursuant to this chapter may appeal to the supreme court within 30 days

1 of the date of the entry of the judgment or order appealed from, provided that
2 the person was a party to the appeal before the board.

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

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

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

9 (c) An objection that has not been raised before the environmental review
10 board may not be considered by the supreme court unless the failure or neglect
11 to raise that objection is excused by the supreme court because of
12 extraordinary circumstances. The findings of the board with respect to
13 questions of fact, if supported by substantial evidence on the record as a whole,
14 shall be conclusive.

15 (d) Only the attorney general may represent the state in appeals under this
16 section.

17 § 8415. RENEWABLE ENERGY PLANT; TELECOMMUNICATIONS
18 FACILITY; APPEALS

19 (a) Within 30 days of the date of the act or decision, any person aggrieved
20 by an act or decision of the secretary under the provisions of law listed in
21 section 8503 of this title or any party by right may appeal to the public service

1 board if the act or decision concerns a renewable energy plant for which a
2 certificate of public good is required under 30 V.S.A. § 248 or a
3 telecommunications facility for which the applicant has applied or has served
4 notice under 30 V.S.A. § 248a(e) that it will apply for approval under
5 30 V.S.A. § 248a. This section shall not apply to a facility that is subject to
6 section 1004 (dams before the Federal Energy Regulatory Commission) or
7 1006 (certification of hydroelectric projects) or chapter 43 (dams) of this title.
8 This section shall not apply to an appeal of an act or decision of the secretary
9 regarding a telecommunications facility made on or after July 1, 2014.

10 (b) For the purpose of this section, “board,” “plant,” and “renewable
11 energy” have the same meaning as under 30 V.S.A. § 8002, and
12 “telecommunications facility” has the same meaning as under 30 V.S.A.
13 § 248a.

14 (c) The provisions of subdivisions 8411(b)(2) (notice of appeal) and
15 (e)(1)(A) (automatic stays of certain permits), (i) (appeals under a general
16 permit), and (m) (intervention) of this title shall apply to appeals under this
17 section.

18 (d) The public service board may consolidate or coordinate appeals under
19 this section with each other and with proceedings under 30 V.S.A. §§ 248 and
20 248a where those appeals and proceedings all relate to the same project unless
21 such consolidation or coordination would be clearly unreasonable. In such a

1 consolidated proceeding, the board's decision may be issued as a single order
2 that includes the necessary findings of fact and conclusions of law and, if the
3 decision is to approve the plant or facility, any and all conditions of approval.
4 This authority to consolidate or coordinate appeals and proceedings shall not
5 confer authority to alter the substantive standards at issue in an appeal or
6 proceeding.

7 (e) The provisions of subsection 8504(g) (review de novo) of this title shall
8 apply to an appeal under this section. In such an appeal, the board shall give
9 the same weight and consideration to prior decisions of the environmental
10 review board and of the entities described in subsection 8410(m) (precedent) of
11 this title as the board gives to its prior decisions.

12 (f) 30 V.S.A. §§ 9 (court of record), 10 (service of process), 11 (pleadings;
13 rules of practice; findings of fact), and 12 (review by supreme court) shall
14 apply to appeals under this section.

15 * * * Environmental Enforcement * * *

16 Sec. 3. 10 V.S.A. § 8001 is amended to read:

17 § 8001. LEGISLATIVE FINDINGS

18 The general assembly finds it necessary to standardize and enhance the
19 enforcement powers of the secretary of the agency of natural resources ~~and the~~
20 ~~enforcement powers of the land use panel of the natural resources board in~~
21 order to:

1 * * *

2 Sec. 4. 10 V.S.A. § 8002 is amended to read:

3 § 8002. DEFINITIONS

4 As used in this chapter:

5 (1) “Board” means the ~~natural resources~~ environmental review board
6 defined by subdivision ~~6001(4)~~ 8402(3) of this title.

7 * * *

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

10 * * *

11 (10) “~~Land use panel~~” means the ~~land use panel of the board, as~~
12 ~~established under chapter 151 of this title.~~ [Repealed.]

13 (11) “Economic benefit” means a reasonable approximation of any gain,
14 advantage, wrongful profit, or delayed avoided cost, financial or otherwise,
15 obtained as a result of a violation. Economic benefit shall not be limited to
16 only competitive advantage obtained.

17 (12) “~~Environmental court~~” or “~~environmental division~~” means the
18 ~~environmental division of the superior court established by 4 V.S.A. § 30.~~

1 Sec. 5. 10 V.S.A. § 8004 is amended to read:

2 § 8004. ENFORCEMENT OF ACT 250

3 In addition to the enforcement of chapter 151 of this title on the secretary's
4 initiative, the secretary shall institute enforcement proceedings under chapter
5 151 when requested by ~~the land use panel~~ a district commission or district
6 coordinator for the jurisdiction in which the violation is alleged to have
7 occurred. ~~The secretary and the land use panel shall develop procedures for~~
8 ~~the cooperative enforcement of chapter 151 of this title.~~

9 Sec. 6. 10 V.S.A. § 8005 is amended to read:

10 § 8005. INVESTIGATIONS; INSPECTIONS; AFFIDAVIT OF
11 COMPLIANCE

12 * * *

13 (b) Access orders.

14 (1) ~~A district or superior court judge~~ The board shall issue an access
15 order when access has been refused and the investigator, by affidavit, describes
16 the property to be examined and identifies:

17 (A) a provision of a permit that authorizes the inspection; or

18 (B) the property as being scheduled for inspection in accordance with
19 a neutral inspection program adopted by the secretary or the land use panel; or

1 (C) facts providing reasonable grounds to believe that a violation
2 exists and that an examination of the specifically described property will be of
3 material aid in determining the existence of the violation.

4 (2) Issuance of an access order shall not negate the secretary's authority
5 to initiate criminal proceedings in the same matter by referring the matter to
6 the office of the attorney general or a state's attorney.

7 (c) At any time, the secretary,~~the land use panel~~, or a district commission
8 created pursuant to subsection 6026(b) of this title may require a permittee to
9 file an affidavit under oath or affirmation that a facility, project, development,
10 subdivision, or activity of the permittee is in compliance with an assurance of
11 discontinuance or order issued under this chapter or a permit issued under a
12 statute identified under subsection 8003(a) of this title or under a rule
13 enforceable under authority set forth under a statute identified under subsection
14 8003(a) of this title. A request for an affidavit of compliance under this
15 subdivision may be delivered by hand or by certified mail. Failure to file an
16 affidavit within the period prescribed by the secretary,~~land use panel~~, or
17 district commission or the material misrepresentation of fact in the affidavit
18 shall be a violation and shall also constitute grounds for revocation of the
19 permit to which the affidavit requirement, assurance of discontinuance, or
20 order under this chapter applies.

1 Sec. 7. 10 V.S.A. § 8007 is amended to read:

2 § 8007. ASSURANCES OF DISCONTINUANCE

3 (a) As an alternative to administrative or judicial proceedings, the
4 secretary, ~~or the land use panel,~~ may accept from a respondent an assurance of
5 discontinuance of a violation. An assurance of discontinuance shall include:

6 (1) a statement of the facts which provide the basis for claiming the
7 violation exists and a description of the alleged violation determined by the
8 secretary ~~or the land use panel;~~ and

9 (2) an agreement by the respondent to perform specific actions to
10 prevent, abate or alleviate environmental problems caused by the violation, or
11 to restore the environment to its condition before the violation, including
12 financial responsibility for such actions.

13 (b) An assurance of discontinuance may include:

14 (1) prevention, abatement, alleviation, or restoration schedules;

15 (2) contribution toward other projects related to the violation, which the
16 respondent and the secretary ~~or the land use panel~~ agree will enhance the
17 natural resources of the area affected by the violation, or their use and
18 enjoyment. A contribution under this subdivision shall be subject to the
19 following:

20 * * *

1 (3) for a violation that does not affect the natural environment or cause
2 any environmental harm, contribution toward public educational projects,
3 administered by the agency of natural ~~resource or the natural~~ resources board,
4 that will enhance the public's awareness and compliance with statutes
5 identified in subsection 8003(a) of this title and with any related rules or
6 permits or related assurances of discontinuance or orders issued under this
7 chapter. Contributions under this subdivision shall be used for the purpose
8 stated in this subdivision and shall be deposited ~~as follows:~~

9 ~~(A) into the Act 250 permit fund established under section 6029 of~~
10 ~~this title for the portion of a settlement attributable to the resolution of a~~
11 ~~violation under authority that the natural resources board enforces under~~
12 ~~subsection 8003(a) of this title; or~~

13 ~~(B) into the treasury for the portion of a settlement attributable to the~~
14 ~~resolution of a violation under authority that the secretary enforces under~~
15 ~~subsection 8003(a) of this title, for use by the secretary;~~

16 (4) payment of monetary penalties, including stipulated penalties for
17 violation of the assurance.

18 (c) An assurance of discontinuance shall be in writing and signed by the
19 respondent and shall specify the statute or regulation alleged to have been
20 violated. The assurance of discontinuance shall be simultaneously filed with
21 the attorney general and the ~~environmental division~~ board. The secretary ~~or~~

1 ~~the land use panel~~ shall post a final draft assurance of discontinuance to its
2 website and shall provide a final draft assurance of discontinuance to a person
3 upon request. When signed by the ~~environmental division~~ board, the assurance
4 shall ~~become~~ have the effect of a judicial order. Upon motion by the attorney
5 general made within 10 days of the date the assurance is signed by the ~~court~~
6 board and upon a finding that the order is insufficient to carry out the purposes
7 of this chapter, the ~~court~~ board shall vacate the order.

8 * * *

9 Sec. 8. 10 V.S.A. § 8008 is amended to read:

10 § 8008. ADMINISTRATIVE ORDERS

11 * * *

12 (b) An order shall include:

13 (1) a statement of the facts which provide the basis for claiming the
14 violation exists;

15 (2) identification of the applicable statute, rule, permit, assurance, or
16 order;

17 (3) a statement that the respondent has a right to a hearing under section
18 8012 of this title, and a description of the procedures for requesting a hearing;

19 (4) a statement that the order is effective on receipt unless stayed on
20 request for a hearing filed within 15 days;

1 is insufficient to carry out the purposes of this chapter, the ~~court~~ board shall
2 vacate the order.

3 Sec. 9. 10 V.S.A. § 8009 is amended to read:

4 § 8009. EMERGENCY ADMINISTRATIVE ORDERS; REQUEST FOR
5 HEARING

6 * * *

7 (b) Prerequisites to issuance. An emergency order may be issued by the
8 secretary only if:

9 (1) the order has been presented to the ~~environmental division~~ board;

10 (2) all reasonable efforts have been made to notify the respondent of the
11 presentation of the order to the ~~environmental division~~ board; and

12 (3) the ~~environmental division~~ board has found that the secretary has
13 made a sufficient showing that grounds for issuance of the order exist.

14 * * *

15 (d) Request for hearing. If an emergency order is issued, the respondent
16 may request a hearing before the ~~environmental division~~ board. Notice of the
17 request for hearing shall be filed with the ~~environmental division~~ board and the
18 secretary within five days of receipt of the order. A hearing on the emergency
19 order shall be held at the earliest possible time and shall take precedence over
20 all other hearings. The hearing shall be held within five days of receipt of the
21 notice of the request for hearing. A request for hearing on an emergency order

1 shall not stay the order. The ~~environmental division~~ board shall issue a
2 decision within five days from the conclusion of the hearing, and no later than
3 30 days from the date the notice of request for hearing was received.

4 * * *

5 Sec. 10. 10 V.S.A. § 8012 is amended to read:

6 § 8012. REQUEST FOR HEARING

7 (a) A respondent or the attorney general may request a hearing on an order
8 issued by the secretary. Notice of a request for hearing shall be filed with the
9 ~~environmental division~~ board and the secretary. Upon receipt of the notice, the
10 secretary shall forward a copy of the order to the ~~environmental division~~ board.

11 (b) The ~~environmental division~~ board shall have authority to:

12 (1) determine whether a violation has occurred. An order shall be
13 reversed when it is determined that a violation has not occurred;

14 (2) affirm, or vacate and remand to the secretary an order issued under
15 subdivision 8008(b)(5) of this title. The ~~environmental division~~ board shall
16 vacate and remand an order under this subdivision when a violation is found to
17 exist but the procedure contained in the order is not reasonably likely to
18 achieve the intended result;

19 (3) to affirm, modify, or reverse any provision of any order issued by the
20 secretary except those identified by subdivision (2) of this subsection. In
21 deciding whether to affirm or reverse a stop work order under this subdivision,

1 the ~~environmental division~~ board shall consider the economic effect of the
2 order on individuals other than the respondent;

3 (4) to review and determine anew the amount of a penalty by applying
4 the criteria set forth in subsections 8010(b) and (c) of this title; and

5 (5) to affirm, modify, or dissolve an emergency order.

6 (c) Notice of the request for hearing shall be filed within 15 days of receipt
7 of the order. The hearing shall be held before the ~~environmental division~~
8 board within 30 days of receipt by the division of the notice, unless continued
9 for good cause. The ~~environmental division~~ board shall issue a written
10 decision within 20 days of the conclusion of the hearing, and no later than 60
11 days from the request for hearing, unless the hearing process is extended for
12 good cause. The decision shall be sent to the parties by certified mail, return
13 receipt requested, and shall include:

14 * * *

15 (d) The ~~environmental division~~ board may grant party status to an
16 aggrieved person for the purpose of providing evidence and legal arguments
17 only in relation to the sufficiency of an order issued under the authority of
18 section 8008 of this title.

19 * * *

1 Sec. 11. 10 V.S.A. § 8013 is amended to read:

2 § 8013. CONDUCT OF HEARINGS; APPEAL; STAY

3 * * *

4 (b) Parties may be represented by counsel in hearings before the
5 ~~environmental division~~ board. The agency of natural resources may represent
6 itself. A party may conduct cross-examination required for a full and true
7 disclosure of the facts.

8 (c) An appeal from a decision of the ~~environmental division~~ board may be
9 taken by the secretary or the respondent to the supreme court. The attorney
10 general also may appeal if the attorney general has appeared as a party.

11 * * *

12 Sec. 12. 10 V.S.A. § 8014 is amended to read:

13 § 8014. ENFORCEMENT OF FINAL ORDERS; COLLECTION ACTIONS

14 (a) The secretary may seek enforcement of a final administrative order or a
15 landfill extension order in the civil, or criminal, ~~or environmental~~ division of
16 the superior court.

17 (b) If a penalty is assessed and the respondent fails to pay the assessed
18 penalty within the time prescribed, the secretary may bring a collection action
19 in any civil or criminal division of the superior court. In addition, when a
20 respondent, except for a municipality, fails to pay an assessed penalty or fails
21 to pay a contribution under subdivision 8007(b)(2) of this title within the

1 prescribed time period, the secretary ~~or the land use panel~~ shall stay the
2 effective date or the processing of any pending permit application or renewal
3 application in which the respondent is involved until payment in full of all
4 outstanding penalties has been received. When a municipality fails to pay an
5 assessed penalty or fails to pay a contribution under subdivision 8007(b)(2) of
6 this title within the prescribed time period, the secretary ~~or the land use panel~~
7 may stay the effective date or the processing of any pending permit application
8 or renewal application in which the municipality is involved until payment in
9 full of all outstanding penalties has been received. For purposes of this
10 subsection, "municipality" shall mean a city, town, or village. The secretary or
11 the land use panel may collect interest on an assessed penalty that a respondent
12 fails to pay within the prescribed time. The secretary or the land use panel
13 shall collect interest on a contribution under subdivision 8007(b)(2) of this title
14 that a respondent fails to pay within the prescribed time.

15 * * *

16 Sec. 13. 10 V.S.A. § 8016 is amended to read:

17 § 8016. RULEMAKING

18 The secretary, ~~in consultation with the land use panel~~, shall adopt rules
19 defining classes of violations and an appropriate range of administrative
20 penalties to be assessed for each class of violation. The classes of violation
21 and range of penalties shall take into account the degree of potential impact on

1 public health, safety, and welfare and the environment resulting from the
2 violation. No administrative penalty may be assessed as part of an
3 administrative order pursuant to this chapter until applicable rules and
4 procedures have been adopted.

5 Sec. 14. 10 V.S.A. § 8018 is amended to read:

6 § 8018. REQUESTS FOR HEARINGS ON LANDFILL CLOSURE

7 EXTENSION ORDERS

8 (a) The applicant or the attorney general may request a hearing on the
9 decision of the secretary under sections 6605e and 8008a of this title.
10 Additionally, a municipality in which the landfill is located or an interested
11 person may request such a hearing if a proposed landfill closure extension
12 order would increase the volume of waste disposed on a quarterly basis by 30
13 percent or more over the volume of waste disposed during the first quarter of
14 1992. Notice of a request for hearing shall be filed with the ~~environmental~~
15 ~~division~~ board and the secretary within 15 days of the date of receipt of the
16 secretary's decision. Upon receipt of the notice, the secretary shall forward a
17 copy of the decision to the ~~environmental division~~ board.

18 (b) The ~~environmental judge~~ board shall have authority to determine
19 whether the secretary's decision is in conformance with the provisions of
20 sections 8008a and 6605e of this title. The ~~environmental judge~~ board may

1 affirm, modify, or reverse the secretary's decision and any provision of any
2 order issued by the secretary under sections 8008a and 6605e of this title.

3 (c) The hearing shall be held before the ~~environmental division~~ board
4 within 30 days of receipt by the division of the notice, unless continued for
5 good cause. The ~~environmental division~~ board shall issue a written decision
6 within 20 days of the conclusion of the hearing, and no later than 60 days from
7 the request for hearing, unless the hearing process is extended for good cause.
8 The decision shall be sent to the parties by certified mail, return receipt
9 requested, and shall include:

10 * * *

11 (e) The environmental division may grant party status to an interested
12 person in a hearing under this section.

13 * * *

14 Sec. 15. 10 V.S.A. § 8019 is amended to read:

15 § 8019. ENVIRONMENTAL TICKETING

16 (a) The secretary ~~and the board each~~ shall have the authority to adopt rules
17 for the issuance of civil complaints for violations of ~~their respective enabling~~
18 statutes listed in subsection 8003(a) of this title or rules adopted under those
19 statutes that are enforceable in the judicial bureau pursuant to the provisions of
20 4 V.S.A. chapter 29 of Title 4. Any proposed rule under this section shall
21 include both the full and waiver penalty amounts for each violation. The

1 maximum civil penalty for any violation brought under this section shall not
2 exceed \$3,000.00 exclusive of court fees.

3 (b) A civil complaint issued under this section shall preclude the issuing
4 entity from seeking an additional monetary penalty for the violation specified
5 in the complaint when any one of the following occurs: the waiver penalty is
6 paid, judgment is entered after trial or appeal, or a default judgment is entered.
7 Notwithstanding this preclusion, the agency ~~and the board~~ may issue additional
8 complaints or initiate an action under chapter 201 of this title, including a
9 monetary penalty when a violation is continuing or is repeated, and may also
10 bring an enforcement action to obtain injunctive relief or remediation and, in
11 such additional action, may recover the costs of bringing the additional action
12 and the amount of any economic benefit the respondent obtained as a result of
13 the underlying violation in accordance with subdivisions 8010(b)(7) and (c)(1)
14 of this title.

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

19 (d) Subsequent to the issuance of a civil complaint under this section and
20 the conclusion of any hearing and appeal regarding that complaint, the

1 following shall be considered part of the respondent's record of compliance
2 calculating a penalty under section 8010 of this title:

3 (1) The respondent's payment of the full or waiver penalty stated in the
4 complaint.

5 (2) The respondent's commission of a violation after the hearing before
6 the judicial bureau on the complaint.

7 (3) The respondent's failure to appear or answer the complaint resulting
8 in the entry of a default judgment.

9 (4) A finding, after appeal, that the respondent committed a violation.

10 Sec. 16. 10 V.S.A. § 8221 is amended to read:

11 § 8221. CIVIL ENFORCEMENT

12 (a) The secretary, ~~or the land use panel of the natural resources board with~~
13 ~~respect to matters relating to land use permits under chapter 151 of this title~~
14 ~~only~~, may bring an action in the civil division of the superior court to enforce
15 the provisions of law specified in subsection 8003(a) of this title, to ensure
16 compliance, and to obtain penalties in the amounts described in subsection (b)
17 of this section. The action shall be brought by the attorney general in the name
18 of the state.

19 * * *

1 (c) In any civil action brought pursuant to this section in which a temporary
2 restraining order or preliminary injunction is sought, relief shall be obtained
3 upon a showing that there is the probability of success on the merits and that:

4 (1) a violation exists; or

5 (2) a violation is imminent and substantial harm is likely to result.

6 In such an action, the secretary ~~or board~~ need not demonstrate immediate and
7 irreparable injury, loss, or damage.

8 * * *

9 * * * Water and Wetlands Rulemaking * * *

10 Sec. 17. 3 V.S.A. § 2825 is amended to read:

11 § 2825. DUTIES OF THE SECRETARY

12 * * *

13 (f) The secretary may adopt rules, in accordance with the provisions of
14 chapter 25 of this title, in the following areas:

15 (1) Rules governing surface levels of lakes, ponds, and reservoirs that
16 are public waters of Vermont.

17 (2) Rules regarding classification of the waters of the state, in
18 accordance with chapter 47 of this title.

19 (3) Rules regarding the establishment of water quality standards, in
20 accordance with chapter 47 of this title.

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

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

8 (A) provides temporary water storage for flood water and storm
9 runoff;

10 (B) contributes to the quality of surface and groundwater through
11 chemical action;

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

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

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

18 (F) provides stopover habitat for migratory birds;

19 (G) contributes to an exemplary wetland natural community, in
20 accordance with the rules of the secretary;

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

1 (I) provides valuable resources for education and research in natural
2 sciences;

3 (J) provides direct and indirect recreational value and substantial
4 economic benefits; and

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

7 (6) Rules regarding the ability to reclassify wetlands, in general, or on a
8 case-by-case basis.

9 (7) Rules protecting wetlands that have been determined under
10 subdivision (5) or (6) of this subsection to be significant, including rules that
11 provide for the issuance or denial of permits and the issuance of wetland
12 determinations under chapter 37 of this title by the department of
13 environmental conservation; provided, however, that the rules may only
14 protect the values and functions sought to be preserved by the designation.
15 The secretary shall not adopt rules that restrain agricultural activities without
16 the consent of the secretary of agriculture, food and markets and shall not
17 adopt rules that restrain silvicultural activities without the consent of the
18 commissioner of forests, parks and recreation.

19 (8) Rules implementing 29 V.S.A. chapter 11, relating to management
20 of lakes and ponds.

1 Sec. 18. FORMER WATER RESOURCES PANEL RULES

2 Rules of the water resources panel of the natural resources board issued
3 pursuant to 10 V.S.A. § 6027(d), as that statute and those rules existed
4 immediately prior to the effective date of this act, shall be deemed rules of the
5 secretary under Sec. 17 of this act, 3 V.S.A. § 2825(f) (water and wetlands
6 rules), and the secretary may amend those rules in accordance with 3 V.S.A.
7 chapter 25.

8 * * * Revisions to 10 V.S.A. chapter 151 (Act 250) * * *

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

10 § 6001. DEFINITIONS

11 When used in this chapter:

12 (1) "Board" means the ~~natural resources~~ environmental review board
13 created under chapter 219 of this title.

14 * * *

15 Sec. 20. 10 V.S.A. § 6021 is amended to read:

16 § 6021. ~~BOARD; VACANCY; REMOVAL~~ COMMISSIONS;

17 DISQUALIFICATION; CONDUCT; INABILITY TO SERVE

18 (a) ~~A natural resources board is created with a land use panel and a water~~
19 ~~resources panel. The board shall consist of nine members appointed by the~~
20 ~~governor, with the advice and consent of the senate, so that one appointment~~
21 ~~on each panel expires in each odd-numbered year. In making appointments,~~

1 ~~the governor and the senate shall give consideration to experience, expertise, or~~
2 ~~skills relating to the environment or land use. The governor shall appoint a~~
3 ~~chair of the board, a position that shall be a full time position. The other eight~~
4 ~~members shall be appointed by the governor, four to the water resources panel~~
5 ~~of the board and four others to the land use panel of the board. The chair shall~~
6 ~~serve as chair on each panel of the board. Following initial appointments, the~~
7 ~~members, except for the chair, shall be appointed for terms of four years. The~~
8 ~~governor shall appoint up to five persons, with preference given to former~~
9 ~~environmental board, water resources board, natural resources board or district~~
10 ~~commission members, with the advice and consent of the senate, to serve as~~
11 ~~alternates for board members. Alternates shall be appointed for terms of four~~
12 ~~years, with initial appointments being staggered. The board chair may assign~~
13 ~~alternates to sit on specific matters before the panels of the board, in situations~~
14 ~~where fewer than five panel members are available to serve. No person who~~
15 ~~receives or, during the previous two years, has received a significant portion of~~
16 ~~the person's income directly or indirectly from permit holders or applicants for~~
17 ~~one or more permits under chapter 47 of this title may be a member of the~~
18 ~~water resources panel.~~

19 (1) The provisions of 12 V.S.A. § 61 (disqualification for interest) shall
20 apply to the chair and members of a district commission.

1 (2) The chair and each member of a district commission shall conduct
2 the affairs of his or her office in such a manner as to instill public trust and
3 confidence and shall take all reasonable steps to avoid any action or
4 circumstance that might result in any one of the following:

5 (A) Undermining his or her independence or impartiality of action.

6 (B) Taking official action on the basis of unfair considerations.

7 (C) Giving preferential treatment to any private interest on the basis
8 of unfair considerations.

9 (D) Giving preferential treatment to any family member or member
10 of his or her household.

11 (E) Using his or her office for the advancement of personal interest or
12 to secure special privileges or exemptions.

13 (F) Adversely affecting the confidence of the public in the integrity
14 of the district commission.

15 ~~(b) Any vacancy occurring in the membership of the board shall be filled~~
16 ~~by the governor for the unexpired portion of the term.~~ A person may request
17 that the chair of a district commission or a member of a district commission
18 recuse himself or herself from a matter in which the person has party status.
19 Should the chair or member determine that recusal is not warranted, the party
20 may seek review of that determination before the board. The board may
21 remove the chair of a district commission or a member of a district commission

1 from a matter pending before the commission if the board determines that
2 removal is necessary to ensure compliance with subsection (a) of this section.

3 (c) ~~Notwithstanding the provisions of 3 V.S.A. § 2004, members shall be~~
4 ~~removable for cause only, except the chair, who shall serve at the pleasure of~~
5 ~~the governor.~~ For one year after leaving office, a former appointee to a district
6 commission shall not, for pecuniary gain:

7 (1) Be an advocate on any matter before the district commission to
8 which he or she was appointed; or

9 (2) Be an advocate before any other public body, or the general
10 assembly or its committees, regarding any matter in which, while an appointee,
11 he or she exercised any official responsibility or participated personally and
12 substantively.

13 (d) The chair of the board, 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. 21. REPEAL

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

1 Sec. 22. 10 V.S.A. § 6025 is amended to read:

2 § 6025. RULES

3 (a) The board may adopt rules of procedure for ~~the panels,~~ the district
4 commissions, ~~and the board itself.~~

5 (b) The ~~land use panel~~ board may adopt substantive rules, in accordance
6 with the provisions of 3 V.S.A. chapter 25 ~~of Title 3,~~ that interpret and carry
7 out the provisions of this chapter that pertain to land use regulated under
8 section 6086 of this title. These rules shall include provisions that establish
9 criteria under which applications for permits under this chapter may be
10 classified in terms of complexity and significance of impact under the
11 standards of subsection 6086(a) of this chapter. In accordance with that
12 classification, the rules may:

13 (1) provide for simplified or less stringent procedures than are otherwise
14 required under sections 6083, 6084, and 6085 of this chapter; and

15 (2) provide for the filing of notices instead of applications for the
16 permits that would otherwise be required under section 6081 of
17 this chapter and

18 (3) provide a procedure by which a district commission may authorize a
19 district coordinator to issue a permit that the district commission has
20 determined under land use panel rules is a minor application with no undue
21 adverse impact.

1 (c)(1) This subsection shall apply to lots within a subdivision:

2 (A) that were created as part of a subdivision owned or controlled by
3 a person who may have been required to obtain a permit under this
4 chapter; and

5 (B) with respect to which a determination has been made that a
6 permit was needed under this chapter; and

7 (C) that were sold to a purchaser prior to January 1, 1991 without a
8 required permit.

9 (2) The rules shall provide for a modified process by which the sole
10 purchaser, or the group of purchasers, of one or more lots to which this
11 subsection applies may apply for and obtain a permit under this chapter that
12 shall be issued in light of the existing improvements, facts, and circumstances
13 that pertain to the lots; provided, however, that the requirements of this chapter
14 shall be modified only to the extent needed to issue those permits. For
15 purposes of these rules, a purchaser eligible for relief under this subsection
16 must not have been involved in creating the lots, must not be a person who
17 owned or controlled the land when it was divided or partitioned, as a person is
18 defined in this chapter, and must not have known at the time of purchase that
19 the transfer was subject to a permit requirement that had not been met.

20 (3) [Deleted.]

1 ~~(d) The water resources panel may adopt rules, in accordance with the~~
2 ~~provisions of chapter 25 of Title 3, in the following areas:~~

3 ~~(1) Rules governing surface levels of lakes, ponds, and reservoirs that~~
4 ~~are public waters of Vermont.~~

5 ~~(2) Rules regarding classification of the waters of the state, in~~
6 ~~accordance with chapter 47 of this title.~~

7 ~~(3) Rules regarding the establishment of water quality standards, in~~
8 ~~accordance with chapter 47 of this title.~~

9 ~~(4) Rules regulating the surface use of public waters, and rules~~
10 ~~pertaining to the designation of outstanding resource waters, in accordance~~
11 ~~with chapter 49 of this title.~~

12 ~~(5) Rules regarding the identification of wetlands that are so significant~~
13 ~~that they merit protection. Any determination that a particular wetland is~~
14 ~~significant will result from an evaluation of at least the following functions and~~
15 ~~values which a wetland serves:~~

16 ~~(A) provides temporary water storage for flood water and storm~~
17 ~~runoff;~~

18 ~~(B) contributes to the quality of surface and groundwater through~~
19 ~~chemical action;~~

20 ~~(C) naturally controls the effects of erosion and runoff, filtering silt~~
21 ~~and organic matter;~~

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

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

5 ~~(F) provides stopover habitat for migratory birds;~~

6 ~~(G) contributes to an exemplary wetland natural community, in~~
7 ~~accordance with the rules of the panel;~~

8 ~~(H) provides for threatened and endangered species habitat;~~

9 ~~(I) provides valuable resources for education and research in natural~~
10 ~~sciences;~~

11 ~~(J) provides direct and indirect recreational value and substantial~~
12 ~~economic benefits; and~~

13 ~~(K) contributes to the open-space character and overall beauty of the~~
14 ~~landscape.~~

15 ~~(6) Rules regarding the ability to reclassify wetlands, in general, or on a~~
16 ~~case-by-case basis.~~

17 ~~(7) Rules protecting wetlands that have been determined under~~
18 ~~subdivision (5) or (6) of this subsection to be significant, including rules that~~
19 ~~provide for the issuance or denial of permits and the issuance of wetland~~
20 ~~determinations under chapter 37 of this title by the department of~~
21 ~~environmental conservation; provided, however, that the rules may only~~

1 ~~protect the values and functions sought to be preserved by the designation.~~
2 ~~The panel shall not adopt rules that restrain agricultural activities without the~~
3 ~~consent of the secretary of the agency of agriculture, food and markets and~~
4 ~~shall not adopt rules that restrain silvicultural activities without the consent of~~
5 ~~the commissioner of the department of forests, parks and recreation.~~

6 ~~(8) Rules implementing 29 V.S.A. chapter 11, relating to management~~
7 ~~of lakes and ponds.~~

8 ~~(e) Except for subsection (a) of this section, references to rules adopted by~~
9 ~~the board shall be construed to mean rules adopted by the appropriate panel of~~
10 ~~the board, as established by this section.~~

11 Sec. 23. EXISTING ACT 250 RULES

12 Act 250 rules adopted pursuant to 10 V.S.A. § 6025 (rules), as that statute
13 and those rules existed immediately prior to the effective date of this act, shall
14 be deemed rules of the environmental review board under Sec. 22 of this act,
15 10 V.S.A. § 6025, and the environmental review board may amend those rules
16 in accordance with 3 V.S.A. chapter 25.

17 Sec. 24. 10 V.S.A. § 6027 is amended to read:

18 § 6027. POWERS

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (2) ~~noncompliance with any permit or permit condition;~~

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

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

1 ~~(5) failure to pay a penalty or other sums owed pursuant to, or other~~
2 ~~failure to comply with, court order, stipulation agreement, schedule of~~
3 ~~compliance, or other order issued under Vermont statutes and related to the~~
4 ~~permit; or~~

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

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

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

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

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

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

1 has incurred attorney's fees or costs in connection with the application.

2 ~~(m)~~(i) After notice and opportunity for hearing, a district commission may
3 withhold a permit or suspend the processing of a permit application for failure
4 of the applicant to pay costs assessed under 3 V.S.A. § 2809 related to the
5 participation of the agency of natural resources in the review of the permit or
6 permit application.

7 Sec. 25. 10 V.S.A. § 6028 is amended to read:

8 § 6028. COMPENSATION

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

11 Sec. 26. 10 V.S.A. § 6029 is amended to read:

12 § 6029. ACT 250 PERMIT FUND

13 There is hereby established a special fund to be known as the Act 250
14 permit fund for the purposes of implementing the provisions of this chapter
15 and chapter 219 of this title. Revenues to the fund shall be those fees collected
16 in accordance with section 6083a of this title, gifts, appropriations, and
17 copying and distribution fees. Revenues to the fund shall also include those
18 fees and costs collected under sections 8408 (assessment of costs) and 8413
19 (fees) of this title. The board shall be responsible for the fund and shall
20 account for revenues and expenditures of the board. At the commissioner's
21 discretion, the commissioner of finance and management may anticipate

1 amounts to be collected and may issue warrants based thereon for the purposes
2 of this section. Disbursements from the fund shall be made through the annual
3 appropriations process to the board, and to the agency of natural resources to
4 support those programs within the agency that directly or indirectly assist in
5 the review of Act 250 applications. This fund shall be administered as
6 provided in 32 V.S.A. chapter 7, subchapter 5 ~~of chapter 7 of Title 32~~.

7 Sec. 27. REPEAL

8 10 V.S.A. § 6030 (map of wireless telecommunication facilities) is
9 repealed.

10 Sec. 28. 10 V.S.A. § 6083 is amended to read:

11 § 6083. APPLICATIONS

12 * * *

13 (b) An applicant or petitioner shall grant the ~~appropriate panel of the~~ board
14 or district commission, or their agents, permission to enter upon the applicant's
15 or petitioner's land for these purposes.

16 * * *

17 (d) The ~~panels of the~~ board and commissions shall make all practical
18 efforts to process matters before ~~the board and permits them~~ them in a prompt
19 manner. The ~~land use panel~~ board shall establish time limits for the processing
20 of land use permits issued under section 6086 of this title as well as procedures
21 and time periods within which to notify applicants whether an application is

1 complete. The ~~land-use panel~~ board shall report annually by February 15 to the
2 house and senate committees on natural resources and energy and on
3 government operations, and the house committee on fish, wildlife and water
4 resources. The annual report shall assess the performance of the board and
5 commissions in meeting the limits; identify areas which hinder effective
6 performance; list fees collected for each permit; summarize changes made to
7 improve performance; and describe staffing needs for the coming year. The
8 annual report shall list the number of enforcement actions taken by the ~~land-use~~
9 ~~panel~~ board, the disposition of such cases, and the amount of penalties
10 collected.

11 * * *

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

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

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

1 construction costs. Failure to file a certification or to pay a supplemental fee
2 shall be grounds for permit revocation.

3 Sec. 30. 10 V.S.A. § 6085(e) is amended to read:

4 (e) The ~~land-use panel~~ board and any district commission, acting through
5 one or more duly authorized representatives at any prehearing conference or at
6 any other times deemed appropriate by the ~~land-use panel~~ board or by the
7 district commission, shall promote expeditious, informal, and nonadversarial
8 resolution of issues, require the timely exchange of information concerning the
9 application, and encourage participants to settle differences. No district
10 commissioner or board member or employee who is participating as a
11 decisionmaker or hearing officer in a particular case may act as a duly
12 authorized representative for the purposes of this subsection. These efforts at
13 dispute resolution shall not affect the burden of proof on issues before a
14 commission or the ~~environmental division~~ board, nor shall they affect the
15 requirement that a permit may be issued only after the issuance of affirmative
16 findings under the criteria established in section 6086 of this title.

17 Sec. 31. 10 V.S.A. § 6086 is amended to read:

18 § 6086. ISSUANCE OF PERMIT; CONDITIONS AND CRITERIA

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

1 either, the subdivision or development will not result in any reduction in the
2 agricultural potential of the primary agricultural soils; or:

3 * * *

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

8 * * *

9 (c) A permit may contain such requirements and conditions as are
10 allowable proper exercise of the police power and which are appropriate within
11 the respect to subdivisions (1) through (10) of subsection (a), including ~~but not~~
12 ~~limited to~~ those set forth in ~~subdivisions~~ 24 V.S.A. §§ 4414(4), 4424(2),
13 4414(1)(D)(i), subsection 4463(b), and section 4464 of Title 24, the dedication
14 of lands for public use, and the filing of bonds to insure compliance. The
15 requirements and conditions incorporated from Title 24 may be applied
16 whether or not a local plan has been adopted. General requirements and
17 conditions may be established by rule of the ~~land use panel~~ board.

18 (d) The ~~land use panel~~ board may by rule allow the acceptance of a permit
19 or permits or approval of any state agency with respect to subdivisions (a)(1)
20 through (5) of ~~subsection (a)~~ this section or a permit or permits of a specified
21 municipal government with respect to subdivisions (a)(1) through (7) and (9)

1 and (10) of ~~subsection (a)~~ this section, or a combination of such permits or
2 approvals, in lieu of evidence by the applicant. A district commission, in
3 accordance with rules adopted by the ~~land use panel~~ board, shall accept
4 determinations issued by a development review board under the provisions of
5 24 V.S.A. § 4420, with respect to local Act 250 review of municipal impacts.
6 The acceptance of such approval, positive determinations, permit, or permits
7 shall create a presumption that the application is not detrimental to the public
8 health and welfare with respect to the specific requirement for which it is
9 accepted. In the case of approvals and permits issued by the agency of natural
10 resources, technical determinations of the agency shall be accorded substantial
11 deference by the commissions. The acceptance of negative determinations
12 issued by a development review board under the provisions of 24 V.S.A.
13 § 4420, with respect to local Act 250 review of municipal impacts shall create
14 a presumption that the application is detrimental to the public health and
15 welfare with respect to the specific requirement for which it is accepted. Any
16 determinations, positive or negative, under the provisions of 24 V.S.A. § 4420
17 shall create presumptions only to the extent that the impacts under the criteria
18 are limited to the municipality issuing the decision. Such a rule may be
19 revoked or amended pursuant to the procedures set forth in 3 V.S.A., chapter
20 25, the Vermont Administrative Procedure Act. The rules adopted by the ~~land~~
21 ~~use panel~~ board shall not approve the acceptance of a permit or approval of

1 such an agency or a permit of a municipal government unless it satisfies the
2 appropriate requirements of subsection (a) of this section.

3 * * *

4 (f) Prior to any appeal of a permit issued by a district commission, any
5 aggrieved party may file a request for a stay of construction with the district
6 commission together with a declaration of intent to appeal the permit. The stay
7 request shall be automatically granted for seven days upon receipt and notice
8 to all parties and pending a ruling on the merits of the stay request pursuant to
9 board rules. The automatic stay shall not extend beyond the 30-day appeal
10 period unless a valid appeal has been filed with the ~~environmental division~~
11 board. The automatic stay may be granted only once under this subsection
12 during the 30-day appeal period. Following appeal of the district commission
13 decision, any stay request must be filed with the ~~environmental division~~ board
14 pursuant to the provisions of chapter ~~220~~ 219 of this title. A district
15 commission shall not stay construction authorized by a permit processed under
16 the ~~land use panel's~~ minor application procedures of the board.

17 Sec. 32. 10 V.S.A. § 6089 is amended to read:

18 § 6089. APPEALS

19 Appeals of any act or decision of a district coordinator or a district
20 commission under this chapter shall be made to the ~~environmental division~~
21 board in accordance with chapter ~~220~~ 219 of this title.

1 Sec. 33. 10 V.S.A. § 6090 is amended to read:

2 § 6090. RECORDING; DURATION AND REVOCATION OF PERMITS

3 * * *

4 (c) ~~[Repealed.]~~ An aggrieved person may petition the board for revocation
5 of a land use permit issued under this chapter. Grounds for revocation are:

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

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

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

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

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

16 (6) failure to provide certification of construction costs, as required
17 under subsection 6083a(a) of this title, or failure to pay supplemental fees as
18 required under that section; or

19 (7) failure to file an affidavit pursuant to subsection 8005(c) of this title
20 within the period prescribed by the secretary of natural resources or district
21 commission, or the material misrepresentation of fact in such an affidavit.

1 Sec. 34. 10 V.S.A. § 6091(d) is amended to read:

2 (d) Completion dates for developments and subdivisions. Permits shall
3 include dates by which there shall be full or phased completion. The ~~land use~~
4 ~~panel board~~, by rule, shall establish requirements for review of those portions
5 of developments and subdivisions that fail to meet their completion dates,
6 giving due consideration to fairness to the parties involved, competing land use
7 demands, and cumulative impacts on the resources involved. If completion has
8 been delayed by litigation, proceedings to secure other permits, proceedings to
9 secure title through foreclosure, or because of market conditions, the district
10 commission shall provide that the completion dates be extended for a
11 reasonable period of time.

12 * * * Downtown Development Statutes; Technical Corrections * * *

13 Sec. 35. 24 V.S.A. § 2792 is amended to read:

14 § 2792. VERMONT DOWNTOWN DEVELOPMENT BOARD

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

18 * * *

19 (10) the chair of the ~~natural resources~~ environmental review board ~~or a~~
20 ~~representative of the land use panel of the natural resources board designated~~
21 ~~by the chair~~; and

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Sec. 36. 24 V.S.A. § 2793c is amended to read:

§ 2793c. DESIGNATION OF GROWTH CENTERS

* * *

(b) Growth center designation application assistance.

* * *

(2) After consultation with the growth center subcommittee and the ~~land~~
~~use panel of the natural resources~~ environmental review board, the
commissioner of economic, housing and community development or designee
shall prepare a “municipal growth centers planning manual and
implementation checklist” to assist municipalities and regional planning
commissions to plan for growth center designation. The implementation
manual shall identify state resources available to assist municipalities and shall
include a checklist indicating the issues that should be addressed by the
municipality in planning for growth center designation. The manual shall
address other relevant topics in appropriate detail, such as: methodologies for
conducting growth projections and build-out analyses; defining appropriate
boundaries that are not unduly expansive; enacting plan policies and
implementation bylaws that accommodate reasonable densities, compact
settlement patterns, and an appropriate mix of uses within growth centers;
planning for infrastructure, transportation facilities, and open space; avoiding

1 or mitigating impacts to important natural resources and historic resources; and
2 strategies for maintaining the rural character and working landscape outside
3 growth center boundaries.

4 * * *

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

12 * * *

13 (2) The ~~panel~~ district commission shall notify all landowners of land
14 located within the proposed growth center, entities that would be accorded
15 party status ~~before a district commission~~ under 10 V.S.A. § 6085(c)(1)(C) and
16 (D), and all owners of land adjoining the proposed growth center of a hearing
17 on the issue. The ~~panel~~ district commission may fashion alternate and more
18 efficient means of providing adequate notice to persons potentially affected
19 under this subdivision. Persons notified may appear at the hearing and be
20 heard, as may any other person who has a particularized interest protected by
21 10 V.S.A. chapter 151 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 ~~division~~ review board pursuant
12 to 10 V.S.A. chapter ~~220~~ 219 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 10 V.S.A. chapter 151 ~~of Title 10~~ and shall be binding upon
18 the district commission and the persons provided notice in the ~~panel~~ district
19 commission proceeding under subdivision (2) of this subsection, ~~according to~~
20 ~~the rules of the land use panel~~, provided the proposed development project is
21 located within the designated growth center.

1 board. Municipalities making an application under this subdivision are not
2 required to exercise ownership of or control over the affected property. The
3 district commission shall be bound by any prior conclusions or findings ~~of the~~
4 ~~land use panel~~, or any final adjudication of those findings and conclusions,
5 pursuant to subsection (f) of this section but shall consider de novo any of the
6 criteria of 10 V.S.A. § 6086(a) that were not subject to the final issuance of
7 findings and conclusions ~~by the land use panel~~ pursuant to that subsection. In
8 approving a master permit, the district commission may set forth specific
9 conditions that an applicant for an individual project permit will be required to
10 meet.

11 * * * Environmental Division of the Superior Court * * *

12 Sec. 37. 4 V.S.A. § 21a is amended to read:

13 § 21a. DUTIES OF THE ADMINISTRATIVE JUDGE

14 (a) The administrative judge shall assign and specially assign superior
15 judges, including himself or herself, and the environmental judges judge to the
16 superior court. All superior judges except the environmental judges judge
17 shall be subject to the requirements of rotation as ordered by the supreme
18 court. Assignments made pursuant to the rotation schedule shall be subject to
19 the approval of the supreme court.

20 (b) In making any assignment under this section, the administrative judge
21 shall give consideration to the experience, temperament, and training of a

1 judge and the needs of the court. In making an assignment to the
2 environmental division, the administrative judge shall give consideration to
3 experience and expertise in environmental and land use law and shall assign or
4 specially assign judges in a manner to provide appropriate attention to all
5 geographic areas of the state.

6 (c) In making any assignments to the environmental division under this
7 section, the administrative judge shall regularly assign ~~two judges, at least one~~
8 ~~of whom shall be an environmental~~ the environmental judge. ~~An~~
9 ~~environmental judge may be assigned to other divisions in the superior court~~
10 ~~for a period of time not exceeding two years. When assigned to other divisions~~
11 ~~in the superior court, the environmental judge shall have all the powers and~~
12 ~~responsibilities of a superior judge.~~

13 Sec. 38. 4 V.S.A. § 34 is amended to read:

14 § 34. JURISDICTION; ENVIRONMENTAL DIVISION

15 The environmental division shall have:

16 ~~(1) jurisdiction of matters arising under chapters 201 and 220 of~~
17 ~~Title 10;~~

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

20 ~~(3) original jurisdiction to revoke permits under chapter 151 of Title 10.~~

1 Sec. 39. 4 V.S.A. § 1001 is amended to read:

2 § 1001. ENVIRONMENTAL DIVISION

3 (a) The environmental division shall consist of ~~two judges, each a judge,~~
4 sitting alone.

5 (b) ~~Two environmental judges~~ An environmental judge shall be appointed
6 to hear matters in the environmental division ~~and to hear other matters in the~~
7 ~~superior court when so assigned by the administrative judge pursuant to~~
8 ~~subsection 21a(c) of this title.~~

9 * * *

10 Sec. 40. REPEAL

11 4 V.S.A. § 1004 (access to information) is repealed.

12 Sec. 41. 24 V.S.A. § 2283 is amended to read:

13 § 2283. APPEALS

14 After exhausting the right of administrative appeal to the board under
15 19 V.S.A. § 5(d)(5), a person aggrieved by any order, act or decision of the
16 agency of transportation may appeal to the superior court, and all proceedings
17 shall be de novo. Any person, including the agency of transportation, may
18 appeal to the supreme court from a judgment or ruling of the superior court.
19 Appeals of acts or decisions of the secretary of natural resources ~~or~~ under this
20 subchapter shall be appealed to the environmental review board. Acts or

1 decisions of a legislative body of a municipality under this subchapter shall be
2 appealed to the environmental division ~~under 10 V.S.A. § 8503.~~

3 Sec. 42. 24 V.S.A. § 4449(a)(3) is amended to read:

4 (3) No permit issued pursuant to this section shall take effect until the
5 time for appeal in section 4465 of this title has passed, or in the event that a
6 notice of appeal is properly filed, no such permit shall take effect until
7 adjudication of that appeal by the appropriate municipal panel is complete and
8 the time for taking an appeal to the environmental division has passed without
9 an appeal being taken. If an appeal is taken to the environmental division, the
10 permit shall not take effect until the environmental division rules ~~in accordance~~
11 ~~with 10 V.S.A. § 8504~~ on whether to issue a stay, or until the expiration of
12 15 days, whichever comes first.

13 Sec. 43. 24 V.S.A. § 4471 is amended to read:

14 § 4471. APPEAL TO ENVIRONMENTAL DIVISION

15 (a) Participation required. An interested person who has participated in a
16 municipal regulatory proceeding authorized under this title may appeal a
17 decision rendered in that proceeding by an appropriate municipal panel to the
18 environmental division as provided by section 4471a of this title. Participation
19 in a local regulatory proceeding shall consist of offering, through oral or
20 written testimony, evidence or a statement of concern related to the subject of
21 the proceeding. An appeal from a decision of the appropriate municipal panel,

1 or from a decision of the municipal legislative body under subsection 4415(d)
2 of this title, shall be taken in such manner as the supreme court may by rule
3 provide for appeals from state agencies governed by 3 V.S.A. §§ 801-816,
4 unless the decision is an appropriate municipal panel decision which the
5 municipality has elected to be subject to review on the record.

6 (b) Appeal on the record. If the municipal legislative body has determined
7 (or been instructed by the voters) to provide that appeals of certain appropriate
8 municipal panel determinations shall be on the record, has defined what
9 magnitude or nature of development proposal shall be subject to the production
10 of an adequate record by the panel, and has provided that the municipal
11 administrative procedure act shall apply in these instances, then an appeal from
12 such a decision of an appropriate municipal panel shall be taken on the record
13 in accordance with the Vermont Rules of Civil Procedure.

14 (c) Notice. Notice of the appeal shall be filed by certified mailing, with
15 fees, to the environmental division and by mailing a copy to the municipal
16 clerk or the administrative officer, if so designated, who shall supply a list of
17 interested persons to the appellant within five working days. Upon receipt of
18 the list of interested persons, the appellant shall, by certified mail, provide a
19 copy of the notice of appeal to every interested person, and, if any one or more
20 of those persons are not then parties to the appeal, upon motion they shall be
21 granted leave by the court to intervene.

1 (d) Local Act 250 review. Notwithstanding the provisions of subsection (a)
2 of this section, decisions of a development review board under section 4420 of
3 this title, with respect to local Act 250 review of municipal impacts, are not
4 subject to appeal, but shall serve as presumptions under the provisions of
5 10 V.S.A. chapter 151.

6 (e) Vermont neighborhood. Notwithstanding subsection (a) of this section,
7 a determination by an appropriate municipal panel shall not be subject to
8 appeal if the determination is that a proposed residential development within a
9 designated downtown development district, designated growth center, or
10 designated Vermont neighborhood seeking conditional use approval will not
11 result in an undue adverse effect on the character of the area affected, as
12 provided in subdivision 4414(3)(A)(ii) of this title.

13 Sec. 44. 24 V.S.A. § 4471a is added to read:

14 § 4471a. ENVIRONMENTAL DIVISION

15 (a) Applicability.

16 (1) This section and section 4471 of this title shall govern all appeals
17 arising under this chapter.

18 (2) This section shall govern all appeals of acts or decisions of the
19 legislative body of a municipality arising under chapter 61, subchapter 10 of
20 this title, relating to the municipal certificate of approved location for
21 salvage yards.

1 (3) This section shall govern all appeals from an act or decision of the
2 environmental division under this chapter.

3 (b) Appeals; exceptions.

4 (1) Within 30 days of the date of the act or decision, an interested
5 person, as defined in section 4465 of this title, who has participated, as defined
6 in section 4471 of this title, in the municipal regulatory proceeding under this
7 chapter may appeal to the environmental division an act or decision made
8 under the chapter by an appropriate municipal panel; provided, however, that:

9 (A) Decisions of a development review board under section 4420 of
10 this title with respect to local Act 250 review of municipal impacts are not
11 subject to appeal but shall serve as presumptions under 10 V.S.A.
12 chapter 151; and

13 (B) An appeal of an act or decision of an appropriate municipal panel
14 shall be to the environmental review board established under 10 V.S.A. chapter
15 219 if the act or decision pertains to land development that requires a permit,
16 certificate, or other approval from the agency of natural resources or a district
17 commission under a statute listed in 10 V.S.A. § 8410(a) or (b) (appellate
18 jurisdiction of environmental review board).

19 (2) Notwithstanding subdivision (1) of this subsection, an interested
20 person may appeal an act or decision under this chapter if the environmental
21 judge determines that:

1 (A) there was a procedural defect which prevented the person from
2 obtaining interested person status or participating in the proceeding;

3 (B) the decision being appealed is the grant or denial of interested
4 person status; or

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

7 (c) Notice. On filing of an appeal under this chapter, the appellant shall
8 give notice as required under section 4471 of this title.

9 (d) Stays.

10 (1) The filing of an appeal shall automatically stay the act or decision in
11 the following situations if it pertains to the denial of interested person status by
12 a board of adjustment, planning commission, or development review board.

13 (2) Upon petition by a party or upon its own motion for a stay of an act
14 or decision, the environmental division shall perform the initial review of the
15 request and may grant a stay. Any decision under this subsection to issue a
16 stay shall be subject to appeal to the supreme court according to the Rules of
17 Appellate Procedure.

18 (e) De novo hearing. The environmental division, applying the substantive
19 standards that were applicable before the tribunal appealed from, shall hold a
20 de novo hearing on those issues which have been appealed, except in the case

1 of a decision being appealed on the record under subsection 4471(b) of
2 this title.

3 (f) Limitation on appeals. Notwithstanding any other provision of this
4 section, a municipal decision regarding whether a particular application
5 qualifies for a recorded hearing under subsection 4471(b) of this title shall not
6 be subject to appeal.

7 (g) Intervention. Any person may intervene in a pending appeal before the
8 environmental division if that person:

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

11 (2) is a party by right;

12 (3) qualifies as an “interested person,” as established in section 4465 of
13 this title; or

14 (4) meets the standard for intervention established in the Vermont Rules
15 of Civil Procedure.

16 (h) Appeals to supreme court.

17 (1) Any person aggrieved by a decision of the environmental division
18 pursuant to this section or any party by right may appeal to the supreme court
19 within 30 days of the date of the entry of the order or judgment appealed from,
20 provided that:

1 (A) the person was a party to the proceeding before the
2 environmental division; or

3 (B) the decision being appealed is the denial of party status; or

4 (C) the supreme court determines that:

5 (i) there was a procedural defect which prevented the person from
6 participating in the proceeding; or

7 (ii) some other condition exists which would result in manifest
8 injustice if the person's right to appeal were disallowed.

9 (2) An objection that has not been raised before the environmental
10 division may not be considered by the supreme court, unless the failure or
11 neglect to raise that objection is excused by the supreme court because of
12 extraordinary circumstances.

13 Sec. 45. STATUTORY REVISION

14 The office of legislative council is directed to make all applicable revisions
15 to the existing Vermont Statutes Annotated to effect this act.

16 (1) When applicable, the terms "natural resources board," "land use
17 panel of the natural resources board," "land use panel," "water resources panel
18 of the natural resources board," "water resources panel," or "water resources
19 board" in the Vermont Statutes Annotated shall be replaced by the term
20 "environmental review board," unless the term refers to the agency of
21 government with authority to adopt rules listed under Sec. 17 of this act,

1 3 V.S.A. § 2825(f) (water and wetlands rules), in which case the replacement
2 term shall be “secretary of natural resources.”

3 (2) When applicable, the terms “10 V.S.A. chapter 220” and “chapter
4 220 of Title 10” in the Vermont Statutes Annotated shall be replaced by the
5 term “10 V.S.A. chapter 219.”

6 (3) When applicable, the term “chapter 220 of this title” in Title 10 of
7 the Vermont Statutes Annotated shall be replaced by the term “chapter 219 of
8 this title.”

9 Sec. 46. TRANSITION; INITIAL APPOINTMENTS

10 (a) Continued jurisdiction over pending cases or appeals. Notwithstanding
11 the repeal of its jurisdictional authority to hear enforcement cases and appeals
12 relative to state environmental permits under Sec. 1 of this act, the
13 environmental division shall continue to have jurisdiction to complete its
14 consideration, under the law as it existed prior to this act’s effective date, of
15 any such case or appeal that is pending before it as of February 1, 2013 if, with
16 respect to the case or appeal, mediation or discovery has commenced, a
17 dispositive motion has been filed, or a trial has begun.

18 (b) Pending rules. Notwithstanding the repeal of its enabling authority, the
19 water resources panel shall continue to exist and have jurisdiction with its
20 preexisting membership to complete its consideration of any proposed rules for
21 which, by February 1, 2013, the period for submitting public comments has

1 been completed. Upon adoption, all such rules shall be deemed to be rules
2 adopted by the environmental review board and shall remain in effect until
3 amended or repealed by the environmental review board.

4 (c) Initial appointments. The following shall apply to the initial
5 appointments of the chair and members of the environmental review board
6 established under Sec. 2 of this act: the judicial nominating board shall make
7 its recommendations to the governor by September 15, 2012 and the governor
8 shall make the appointments by December 15, 2012, with terms to begin on
9 February 1, 2013.

10 Sec. 47. APPROPRIATIONS AND POSITIONS

11 As of February 1, 2013:

12 (1) The positions of chair and all regular employees of the natural
13 resources board are transferred to the environmental review board. The chair
14 of the environmental review board shall occupy the position of the former
15 chair of the natural resources board. The positions of two members and two
16 alternate members of the environmental review board are created.

17 (2) The office and position of one environmental judge, created by Sec.
18 121(d)(2) of No. 115 of the Acts of the 2003 Adj. Sess. (2004), is eliminated.

19 (3) One staff attorney position of the natural resources board is
20 eliminated.

1 (4) The positions of one law clerk and one docket clerk-courtroom
2 operator are transferred from the environmental division of the superior court
3 to the environmental review board.

4 (5) All appropriations and funds associated with the natural resources
5 board are transferred to the environmental review board.

6 (6) All funds associated with the offices and positions identified in
7 subdivisions (2) and (4) of this section, including wages, personal service
8 expenses, and operating expenses, are transferred to the environmental review
9 board.

10 Sec. 48. EFFECTIVE DATES

11 (a) This section and Secs. 45 (statutory revision), 46 (transition; initial
12 appointment), and 47 (appropriations and positions) of this act shall take effect
13 on passage.

14 (b) The remaining sections of this act shall take effect on February 1, 2013,
15 except that in Sec. 2 of this act, 10 V.S.A. § 8403(b) (appointments;
16 environmental review board) shall take effect on passage.