

1 S.28

2 Introduced by Senator Lyons

3 Referred to Committee on Natural Resources and Energy

4 Date: January 25, 2011

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

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

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

1 require that the department of environmental quality convene a working group
2 on further improving Vermont's environmental permitting process.

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

An act relating to the permit process for protecting the environment

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

7 ~~*** Creation of Department of Environmental Quality ***~~

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

9 CHAPTER 51. ENVIRONMENTAL QUALITY;
10 NATURAL RESOURCES

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

12 § 2801. DEFINITIONS

13 In this chapter, the following words mean:

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

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

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

19 (2)(4) Department: ~~A major component of the agency.~~ The department
20 ~~of environmental quality created pursuant to section 2802 of this title, except~~

1 ~~when used as part of the terms “department of fish and wildlife” and~~
2 ~~“department of forests, parks and recreation.”~~

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

5 ~~(4)(6) Division: A major~~ substantive, technical, or administrative
6 component of a ~~the~~ department or a ~~technical or administrative support~~
7 ~~component of the agency.~~

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

10 ~~(6)(7) Secretary: The head of the agency, a member of the governor’s~~
11 ~~cabinet and responsible to the governor for the administration of the agency~~

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

14 § 2802. CREATION OF AGENCY DEPARTMENT

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

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

18 (2) ~~The department of forests, parks and recreation~~ division of state land
19 use, to include:

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

1 ~~(B) The division of parks Act 250 district coordinators and other staff~~
2 assigned to the district commissions created under 10 V.S.A. § 6026.

3 (C) The ~~division of recreation~~ district commissions created under
4 10 V.S.A. § 6026, attached for administrative support.

5 (3) ~~[Repealed.]~~ The division of environmental enforcement created
6 under section 2880 of this title.

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

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

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

15 (7) The division of geology and mineral resources created under section
16 2879 of this title.

17 (8) The administrative services division created under section 2876 of
18 this title.

19 (b) ~~The natural resources board~~ environmental council is attached to the
20 agency for the purpose of receiving administrative support created to be the

1 ~~chief executive body of the department and to exercise such quasi-judicial and~~
2 ~~other authority as is granted to it by law.~~

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

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

6 (2) The New England interstate water pollution control commission.

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

15 § 2803. ADVISORY CAPACITY

16 ~~(a) All~~ Except for the environmental council, all boards, committees,
17 councils, and activities ~~and departments~~ which under this chapter are a part of
18 the ~~agency~~ department shall be advisory only, except as hereinafter provided,
19 and the powers and duties of such boards, committees, councils, and activities
20 ~~and departments~~, including administrative, policy making, rule making, and

1 ~~regulatory functions, shall vest in and be exercised by the secretary of the~~
2 ~~agency environmental council.~~

3 ~~(b) Notwithstanding subsection (a) of this section or any other provision of~~
4 ~~this chapter, the fish and wildlife board and the natural resources board shall~~
5 ~~retain and exercise all powers and functions given to them by law which are of~~
6 ~~regulatory or quasi-judicial nature, including the power to adopt, amend and~~
7 ~~repeal rules and regulations, to conduct hearings, to adjudicate controversies~~
8 ~~and to issue and enforce orders, in the manner and to the extent to which those~~
9 ~~powers are given to those respective boards by law.~~

10 (c) [Repealed.]

11 § 2804. PERSONNEL DESIGNATION

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

1 ~~Sec. 3. 3 V.S.A. § 2809 is amended to read:~~

2 § 2809. REIMBURSEMENT OF AGENCY DEPARTMENT COSTS

3 (a) Except for proceedings before the council, for which retention of
4 personnel and assessment of costs shall be governed by sections 2887 through
5 2889 of this title:

6 (1) The ~~secretary~~ executive director may require an applicant for a
7 permit, license, certification, or order issued under a program that the ~~secretary~~
8 department enforces under 10 V.S.A. § 8003(a) to pay for the cost of research,
9 scientific, or engineering expertise or services that the ~~agency of natural~~
10 ~~resources~~ department does not have when such expertise or services are
11 required for the processing of the application for the permit, license,
12 certification, or order.

13 (2) The ~~secretary~~ executive director may require an applicant under
14 chapter 151 of Title 10 to pay for the time of ~~agency of natural resources~~
15 department personnel, other than personnel of the division of state land use
16 described in subdivision 2802(a)(2) of this title, providing research, scientific,
17 or engineering services or for the cost of expert witnesses when ~~agency~~
18 department personnel or expert witnesses are required for the processing of the
19 permit application.

20 (3) Except as set forth under chapters 59 and 159 of Title 10 and
21 10 V.S.A. § 1283, the ~~secretary~~ executive director may require a person who

1 ~~caused the agency department to incur expenditures or a person in violation of~~
2 ~~a permit, license, certification, or order issued by the secretary department to~~
3 ~~pay for the time of agency department personnel or the cost of other research,~~
4 ~~scientific, or engineering services incurred by the agency department in~~
5 ~~response to a threat to public health or the environment presented by an~~
6 ~~emergency or exigent circumstance.~~

7 (b) Prior to commencing or contracting for research, scientific, or
8 engineering expertise or services or contracting for expert witnesses for which
9 the secretary executive director intends to seek cost reimbursement under
10 subdivisions (a)(1) and (2) of this section, the secretary executive director shall
11 notify the applicant for a permit, license, certification, or order of the
12 secretary's authority to assess costs under this section.

13 (c)(1) Within 15 days of issuance of notice under subsection (b) of this
14 section, an applicant for a permit, license, certification, or order may request a
15 meeting with the secretary executive director to identify and review the
16 proposed agency services or contracting services that may be assessed to the
17 applicant.

18 (2) The secretary executive director may enter into agreements with an
19 applicant for a permit, license, certification, or order under which either the
20 applicant or the agency of natural resources department shall provide or pay

1 ~~for the necessary research, scientific, or engineering expertise or services or~~
2 expert witnesses.

3 (3) When the ~~secretary~~ executive director meets with an applicant under
4 this subsection, the ~~secretary~~ executive director shall provide the applicant in
5 writing a preliminary estimate of the costs to be assessed and the purpose of
6 the funds.

7 (d) The following apply to the authority established under ~~subsection~~
8 subdivisions (a)(1)–(3) of this section:

9 (1) The ~~secretary~~ executive director may assess costs under subdivisions
10 (a)(1) and (2) of this section to the applicant or applicants for the permit only
11 with the approval of the governor. Costs assessed under subdivision (a)(3) of
12 this section shall not require approval of the governor.

13 (2) The ~~secretary~~ executive director may require reimbursement only of
14 costs in excess of \$3,000.00.

15 (3) The ~~secretary~~ executive director may revise estimates previously
16 noticed as necessary from time to time during the progress of the work and
17 shall notify the applicant in writing of any revision.

18 (4) The ~~secretary~~ executive director shall provide the applicant with a
19 detailed statement of a final assessment under this section showing the total
20 amount of money expended or contracted for in the work and directing the
21 manner and timing of payment by the applicant.

1 ~~(5) All funds collected from applicants shall be paid into the state~~
2 ~~treasury.~~

3 (e) ~~The secretary executive director may authorize a division of the~~
4 ~~department to withhold a permit approval or suspend the processing of a~~
5 ~~permit application for failure to pay reasonable costs imposed under this~~
6 ~~subsection.~~

7 (f) ~~An action or determination of the secretary executive director under this~~
8 ~~section shall constitute an act or decision of the secretary that may be appealed~~
9 ~~in accordance with 10 V.S.A. § 8504.~~

10 Sec. 4. REDESIGNATION

11 3 V.S.A. chapter 51, subchapter 2 is redesignated to read:

12 Subchapter 2. Secretary Council

13 Sec. 5. 3 V.S.A. §§ 2821 and 2822 are amended to read:

14 § 2821. ~~APPOINTMENT AND SALARY~~ COUNCIL; CHAIR; VICE CHAIR

15 (a) ~~The agency department shall be under the direction and supervision of a~~
16 ~~secretary, who shall be appointed by the governor with the advice and consent~~
17 ~~of the senate and shall serve at the pleasure of the governor the environmental~~
18 ~~council through the chair and, subject to the chair's supervision, the executive~~
19 ~~director.~~

20 (b) ~~The council shall consist of a full-time chair and two full-time~~
21 ~~members.~~

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

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

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

11 (i) Three members appointed by the governor.

12 (ii) Two members appointed by the speaker of the house, one of
13 whom shall be a member of the house committee on fish, wildlife and water
14 resources and one of whom shall be a member of the house committee on
15 natural resources and energy.

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

19 (iv) No member of the environmental appointments committee
20 may serve on the council. The department shall provide administrative
21 assistance to the environmental appointments committee.

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

18 (c) The term of each member of the council shall be six years, except as set
19 forth in subsection (d) of this section. Each term shall commence on
20 February 1. Any appointment to fill a vacancy shall be for the unexpired

1 ~~portion of the term vacated. A member wishing to succeed himself or herself~~
2 in office may seek reappointment under the terms of this section.

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

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

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

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

13 (h) Rules to be adopted by the department shall be developed by the
14 applicable division and presented to the council for its consideration and
15 approval prior to commencement of rulemaking under chapter 25 of this title.
16 The council may initiate rulemaking on its own motion on any matter within
17 the department's jurisdiction. Authority to approve the filing of a final
18 proposal and an adopted rule on behalf of the department under sections 841
19 and 843 of this title shall rest with the council.

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

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

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

13 § 2822. BUDGET AND REPORT; POWERS

14 ~~(a) The secretary council shall be responsible to the governor and shall plan~~
15 ~~and, through the executive director, coordinate and direct the functions vested~~
16 ~~in the agency department. The secretary council shall prepare and submit to~~
17 ~~the governor an annual budget and shall prepare and submit to the governor~~
18 ~~and the general assembly in November of each year a report concerning the~~
19 ~~operation of the agency department for the preceding fiscal year and the future~~
20 ~~goals and objectives of the agency department.~~

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

3 (c) If a waiver has been granted by the public service board under
4 30 V.S.A. § 248(k), the secretary chair or the secretary's chair's designee shall
5 expedite and may authorize temporary emergency permits with appropriate
6 conditions to minimize significant adverse environmental impacts within the
7 jurisdiction of the agency department, after limited or no opportunity for public
8 comment, allowing site preparation for or construction or operation of an
9 electric transmission facility or a generating facility necessary to assure the
10 stability or reliability of the electric system or a natural gas facility, regardless
11 of any provision in Title 10 or chapter 11 of Title 29. Such authorization shall
12 be given only after findings by the secretary chair that: good cause exists
13 because an emergency situation has occurred; the applicant will fulfill any
14 conditions imposed to minimize significant adverse environmental impacts;
15 and the applicant will, upon the expiration of the temporary emergency permit,
16 remove, relocate, or alter the facility as required by law or by an order of the
17 public service board. A permit issued under this subsection shall be subject to
18 such conditions as are required by the secretary chair and shall be valid for the
19 duration of the declared emergency plus 180 days, or such lesser overall term
20 as determined by the secretary chair. Upon the expiration of a temporary
21 emergency permit under this subsection, if any applicable permits have not

1 ~~been issued by the secretary or the commissioner of environmental~~
2 ~~conservation department, the secretary department may seek enforcement~~
3 ~~under applicable law.~~

4 (d) The ~~secretary council~~ may adopt rules to implement the authority to
5 issue expedited, temporary emergency permits specified in subsection (c) of
6 this section and in 20 V.S.A. § 9(11).

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

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

12 (g) The ~~secretary department~~ shall make all practical efforts to process
13 permits in a prompt manner. The ~~secretary council~~ shall establish time limits
14 for the processing of each permit as well as procedures and time periods within
15 which to notify applicants whether an application is complete. The ~~secretary~~
16 ~~council~~ shall report no later than the third Tuesday of each annual legislative
17 session to the house and senate committees on natural resources ~~and energy~~
18 and ~~on~~ government operations. The annual report shall assess the ~~agency's~~
19 ~~department's~~ performance in meeting the limits; identify areas which hinder
20 effective ~~agency department~~ performance; list fees collected for each permit;
21 summarize changes made by the ~~agency department~~ to improve performance;

1 ~~describe staffing needs for the coming year, and certify that the revenue from~~
2 the fees collected is at least equal to the costs associated with those positions.

3 This report is in addition to the fee report and request, required by subchapter 6
4 of chapter 7 of Title 32.

5 (h) [Repealed.]

6 (i) The ~~secretary~~ department shall not process an application for which the
7 applicable fee has not been paid unless the ~~secretary~~ department specifies that
8 the fee may be paid at a different time or unless the person applying for the
9 permit is exempt from the permit fee requirements pursuant to 32 V.S.A.

10 § 710. In addition, the persons who are exempt under ~~section~~ 32 V.S.A. § 710
11 ~~of Title 32~~ are also exempt from the application fees for stormwater operating
12 permits specified in subdivisions (j)(2)(A)(iii)(I) and (II) of this section if they
13 otherwise meet the requirements of ~~section~~ 32 V.S.A. § 710. Municipalities
14 shall be exempt from the payment of fees under this section except for those
15 fees prescribed in subdivisions (j)(1), (2), (7), (8), (14), and (15) of this section
16 for which a municipality may recover its costs by charging a user fee to those
17 who use the permitted services, except that a municipality shall also be exempt
18 from those fees for orphan stormwater systems prescribed in subdivisions
19 (j)(2)(A)(iii) and (2)(B)(iv)(I) or (II) of this section when the municipality
20 agrees to become an applicant or ~~co-applicant~~ coapplicant for an orphan
21 stormwater system under ~~section~~ 10 V.S.A. § 1264c ~~of Title 10~~.

1 ***

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

8 Sec. 6. REPEAL

9 3 V.S.A. § 2823 (executive assistants; vacancy) is repealed.

10 Sec. 7. 3 V.S.A. §§ 2824 and 2825 are amended to read:

11 § 2824. TRANSFER OF PERSONNEL AND APPROPRIATIONS

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

16 (b) The secretary council, with the approval of the governor, may transfer
17 appropriations or parts thereof between ~~departments and other components in~~
18 ~~the agency department,~~ consistent with the purposes for which the
19 appropriations were made, ~~excepting fish and wildlife funds which shall~~
20 ~~remain separate and intact.~~

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

3 § 2825 DUTIES OF THE SECRETARY COUNCIL

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

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

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

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

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

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

1 ~~Sec. 8. 3 V.S.A. § 2829 is added to read:~~

2 § 2829. PROCEDURE BEFORE DIVISIONS OF THE DEPARTMENT

3 (a) The council shall promulgate rules establishing notice and procedural
4 requirements for applications reviewed and declaratory rulings issued by the
5 department.

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

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

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

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

16 (C) Applications which should be processed according to the
17 contested case requirements of chapter 25 of this title, with the applicable
18 division director or the director's designee serving as the decision-maker, and
19 for which notice should be provided to adjoining landowners.

20 (b) For the purpose of this section, notice to adjoining landowners includes
21 the provision of a list of adjoining landowners to the applicable division and

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

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

12 (d) This section does not apply to notice and hearing requirements under
13 10 V.S.A. chapter 151.

14 Sec. 9. REDESIGNATION

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

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

17 Directors

1 ~~Sec. 10. 3 V.S.A. §§ 2851 through 2854 are amended to read:~~

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

3 TERM

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

11 § 2852. MANDATORY AND DELEGATED DUTIES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 § 2854. DIRECTORS

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

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

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

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

9 Sec. 11. REDESIGNATION

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

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

13 Sec. 12. 3 V.S.A. § 2870 is added to read:

14 § 2870. CREATION; SECRETARY

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

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

18 (A) The division of wildlife.

19 (B) The division of fisheries.

20 (C) The division of law enforcement.

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

1 ~~(A) The division of forests.~~

2 ~~(B) The division of parks.~~

3 ~~(C) The division of recreation.~~

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

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

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

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

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

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

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

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

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

- 1 ~~(C) Supervise and control all staff functions.~~
- 2 (f) With the approval of the governor, the secretary may:
- 3 (1) Transfer appropriations or parts thereof within or between
- 4 departments, divisions, and branches, consistent with the purposes for which
- 5 the appropriations were made.
- 6 (2) Transfer classified positions within or between departments and
- 7 divisions subject only to state personnel laws and regulations.
- 8 (3) Cooperate with the appropriate federal agencies and administer
- 9 federal funds in support of programs within the agency.
- 10 (4) Submit plans and reports, and in other respects comply with federal
- 11 law and regulations which pertain to programs administered by the agency.
- 12 (5) Make regulations consistent with law for the internal administration
- 13 of the agency and its programs.
- 14 (6) Appoint an employee to act as secretary in the event of the
- 15 secretary's absence or vacancy in the office of the secretary. The provisions of
- 16 subsections 253(d) and (e) of this title shall apply.
- 17 (7) Create such advisory councils or committees as he or she deems
- 18 necessary within the agency, and appoint their members for a term not
- 19 exceeding his or hers.

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

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

7 Sec. 13. 3 V.S.A. §§ 2871 and 2872 are amended to read:

8 § 2871. DEPARTMENT OF FISH AND WILDLIFE

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

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

1 ~~§ 2872. DEPARTMENT OF FORESTS, PARKS AND RECREATION~~

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

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

13 Sec. 14. DESIGNATION

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

16 Subchapter 5. Department of Environmental Quality; Divisions

17 Sec. 15. 3 V.S.A. § 2873 is amended to read:

18 § 2873. DEPARTMENT OF ENVIRONMENTAL CONSERVATION

19 QUALITY

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

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

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

12 * * *

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

19 * * *

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

1 ~~(1) The toxic technical advisory board shall consist of at least five~~
2 ~~members appointed by the governor executive director with the approval of the~~
3 ~~environmental council, representing the various geographic areas of the state~~
4 ~~and with expertise in professional disciplines such as occupational health and~~
5 ~~safety, industrial hygiene, engineering, chemistry, manufacturing, business,~~
6 ~~ecology, and environmental protection. Members shall be selected from~~
7 ~~business and industry groups that are to be served by technical assistance.~~

8 * * *

9 Sec. 16. 3 V.S.A. §§ 2876, 2877, and 2879 are amended to read:

10 § 2876. ADMINISTRATIVE SERVICES DIVISION

11 (a) The administrative services division ~~of the agency~~ is created within the
12 department of environmental quality. It shall be administered by a director of
13 administrative services who shall be in the classified service.

14 (b) The administrative services division shall provide the following
15 services to the ~~agency~~ department and all its components, including
16 components assigned to it for administration, and to the agency:

17 (1) Personnel administration;

18 (2) Coordination of financing and accounting activities;

19 (3) Coordination of filing and records maintenance activities;

20 (4) Provision of facilities, office space, and equipment and the care

21 thereof;

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

4 (6) Management improvement services; and

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

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

11 § 2877. PLANNING DIVISION

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

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

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

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

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

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

3 (5) Preparing a municipal planning and land use manual in accordance
4 with 24 V.S.A. § 4304.

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

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

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

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

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

8 § 2879. DIVISION OF GEOLOGY AND MINERAL RESOURCES

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

12 Sec. 17. 3 V.S.A. § 2880 is added to read:

13 § 2880. DIVISION OF ENVIRONMENTAL ENFORCEMENT

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

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

6 Sec. 18. 3 V.S.A. § 2881 is added to read:

7 § 2881. OFFICE OF ENVIRONMENTAL COUNSEL

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

1 ~~*** Quasi-Judicial Proceedings before Environmental Council ***~~

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

3 Subchapter 6. Quasi-Judicial Proceedings; Environmental Council

4 § 2885. POWERS; PROCESS; REVOCATION

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

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

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

1 ~~(d) A prehearing or procedural conference may be held upon any~~
2 ~~reasonable notice.~~

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

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

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

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

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

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

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

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

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

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

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

15 § 2886. POWERS OF SINGLE COUNCIL MEMBER OR OTHER OFFICER
16 OR EMPLOYEE

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

21 (1) the executive director;

1 ~~(2) the director of environmental enforcement;~~

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

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

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

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

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

1 ~~parties pursuant to section 811 of this title. However, judgment on those~~
2 ~~findings shall be rendered only by a majority of the council.~~

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

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

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

1 § 2887. EXPERTS AND PERSONNEL

2 (a) With the approval of the governor, the council may appoint and employ,
3 at the expense of the state, legal counsel, scientists, engineers, and such
4 number of experts, clerks, stenographers, and temporary employees as it deems
5 necessary in the performance of its quasi-judicial functions. Such personnel
6 shall be subject to the direct supervision of the chair and not the executive
7 director.

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

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

17 § 2888. PARTICULAR PROCEEDINGS; PERSONNEL

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

1 ~~(A) to assist the council on any request for hearing under chapter 201~~
2 ~~of Title 10, on any appeal under chapter 220 of Title 10, or on any petition for~~
3 ~~revocation;~~

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

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

9 ~~(2) The personnel authorized by this section shall be in addition to the~~
10 ~~regular personnel of the council or other state agencies; and in the case of other~~
11 ~~state agencies, may be retained only with the approval of the governor and~~
12 ~~after notice to the applicant. The council shall fix the amount of compensation~~
13 ~~and expenses to be paid such additional personnel.~~

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

18 § 2889. ASSESSMENT OF COSTS

19 ~~(a) The council may allocate to an applicant the portion of its expenses~~
20 ~~incurred by retaining additional personnel for a proceeding before the council.~~
21 ~~On petition of an applicant to which costs are proposed to be allocated, the~~

1 ~~council shall review and determine, after opportunity for hearing, the necessity~~
2 ~~and reasonableness of those costs, having due regard for the size and~~
3 ~~complexity of the project, and may amend or revise an allocation. Prior to~~
4 ~~allocating costs, the council shall make a determination of the purpose and use~~
5 ~~of the funds to be raised under this section, identify the recipient of the funds,~~
6 ~~provide for the allocation of costs among applicants to be assessed, indicate an~~
7 ~~estimated duration of the proceedings, and estimate the total costs to be~~
8 ~~imposed. With the approval of the council, estimates may be revised as~~
9 ~~necessary. From time to time during the progress of the work, the council shall~~
10 ~~render to the applicant detailed statements showing the amount of money~~
11 ~~expended or contracted for in the work of additional personnel, which~~
12 ~~statements shall be paid into the state treasury at the time and in the manner as~~
13 ~~the council may reasonably direct.~~

14 (b) When regular employees of the department are employed in
15 quasi-judicial proceedings before the council, the council may also allocate the
16 portion of their costs and expenses to the applicant or applicants involved in
17 the proceedings. The costs of regular employees shall be computed on the
18 basis of working days within the salary period. The manner of assessment and
19 making payments shall otherwise be as provided for additional personnel in
20 subsection (a) of this section.

1 ~~(c) All payments for costs allocated pursuant to this section shall be~~
2 ~~deposited into the fund created under 10 V.S.A. § 6029.~~

3 * * * Act 250 Provisions * * *

4 Sec. 20. 10 V.S.A. § 6001 is amended to read:

5 § 6001. DEFINITIONS

6 When used in this chapter:

7 (1) ~~“Board”~~ “Council” means the ~~natural resources board~~ environmental
8 council created under chapter 51 of Title 3.

9 * * *

10 (34) “Department” means the department of environmental quality
11 created under chapter 51 of Title 3, except when used as part of “health
12 department” or the full name of another department of state government.

13 (35) For the purpose of this chapter, “Interested person” means each of
14 the following:

15 (A) A person owning or occupying property that adjoins or is in the
16 immediate neighborhood of a property that is the subject of any decision or act
17 taken under this chapter, who can demonstrate an impact on the person’s
18 interest under the criteria of subsection 6086(a) of this title, and who alleges
19 that the development or subdivision will not comply with one or more of the
20 criteria under which the person’s interest is affected.

1 ~~(B) Any ten persons who may be any combination of voters or real~~
2 ~~property owners within a municipality described in subdivision 6085(c)(1)(C)~~
3 ~~of this title who, by signed petition to the district commission, alleges that any~~
4 ~~relief requested by a person under this title, if granted, will not be in accord~~
5 ~~with one or more criteria of subsection 6086(a) of this title. This petition to a~~
6 ~~district commission must designate one person to serve as the representative of~~
7 ~~the petitioners regarding all matters related to the application.~~

8 Sec. 21. 10 V.S.A. § 6007(c) is amended to read:

9 (c) With respect to the partition or division of land, or with respect to an
10 activity which might or might not constitute development, any person,
11 including the department of environmental quality's director of environmental
12 enforcement, may submit to the district coordinator an "Act 250 Disclosure
13 Statement" and other information required by the rules of the ~~board~~ council,
14 and may request a jurisdictional opinion from the district coordinator
15 concerning the applicability of this chapter. If a requestor wishes a final
16 determination to be rendered on the question, the district coordinator, at the
17 expense of the requestor and in accordance with rules of the ~~board~~ council,
18 shall publish notice of the issuance of the opinion in a local newspaper
19 generally circulating in the area where the land which is the subject of the
20 opinion is located, and shall serve the opinion on all persons listed in
21 subdivisions 6085(c)(1)(A) through (D) of this title. In addition, the requestor

1 ~~who is seeking a final determination shall consult with the district coordinator~~
2 and obtain approval of a subdivision 6085(c)(1)(E) list of persons who shall be
3 notified by the district coordinator because they are adjoining property owners
4 or other persons who would be likely to be able to demonstrate a particularized
5 interest protected by this chapter that may be affected by an act or decision by
6 a district commission, if an application were required under this chapter, that
7 they constitute interested persons. A jurisdictional opinion of a district
8 coordinator shall be subject to a request for reconsideration in accordance with
9 rules of the ~~board~~ council and may be appealed to the ~~environmental division~~
10 pursuant to chapter 220 of this title.

11 Sec. 22. 10 V.S.A. § 6021 is amended to read:

12 § 6021. ~~BOARD; VACANCY, REMOVAL~~ COMMISSIONS;

13 DISQUALIFICATION, INABILITY TO SERVE

14 (a) ~~A natural resources board is created with a land use panel and a water~~
15 ~~resources panel. The board shall consist of nine members appointed by the~~
16 ~~governor, with the advice and consent of the senate, so that one appointment~~
17 ~~on each panel expires in each odd numbered year. In making appointments,~~
18 ~~the governor and the senate shall give consideration to experience, expertise, or~~
19 ~~skills relating to the environment or land use. The governor shall appoint a~~
20 ~~chair of the board, a position that shall be a full time position. The other eight~~
21 ~~members shall be appointed by the governor, four to the water resources panel~~

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

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.~~

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

20 ~~(d) The chair of the council, upon request of the chair of a district~~
21 ~~commission, may appoint and assign former commission members to sit on~~

1 ~~specific commission cases when some or all of the regular members and~~
2 alternates are disqualified or otherwise unable to serve.

3 Sec. 23. REPEAL

4 10 V.S.A. §§ 6022 (personnel) and 6024 (intragovernmental cooperation)
5 are repealed.

6 Sec. 24. 10 V.S.A. § 6025 is amended to read:

7 § 6025. RULES

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

10 (b) The ~~land-use panel~~ council may adopt substantive rules, in accordance
11 with the provisions of chapter 25 of Title 3, that interpret and carry out the
12 provisions of this chapter that pertain to land use regulated under section 6086
13 of this title. These rules shall include provisions that establish criteria under
14 which applications for permits under this chapter may be classified in terms of
15 complexity and significance of impact under the standards of subsection
16 6086(a) of this chapter. In accordance with that classification, the rules may:

17 * * *

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

20 * * *

1 ~~(c) Except for subsection (a) of this section, references to rules adopted by~~
2 ~~the board shall be construed to mean rules adopted by the appropriate panel of~~
3 ~~the board, as established by this section.~~

4 Sec. 25. 10 V.S.A. § 6027 is amended to read:

5 § 6027. POWERS

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

8 * * *

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

14 * * *

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

17 (f) The ~~board~~ council may publish or contract to publish annotations and
18 indices of ~~the its~~ decisions of ~~the environmental division~~, and the text of those
19 decisions. The published product shall be available at a reasonable rate to the
20 general public and at a reduced rate to libraries and governmental bodies
21 within the state.

1 ~~(g) The land use panel council shall manage the process by which land use~~
2 ~~permits are issued under section 6086 of this title.~~

3 ~~(h) The department of environmental quality's director of environmental~~
4 ~~enforcement may initiate enforcement on ~~related~~ matters; related to this chapter~~
5 ~~or under the provisions of ~~chapter~~ chapters 201 and 211 of this title, and may~~
6 ~~petition the environmental ~~division~~ council for revocation of land use permits~~
7 ~~issued under this chapter. Grounds for revocation are:~~

8 * * *

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

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

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

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

19 ~~(i)~~ (i) A district commission may reject an application under this chapter
20 that misrepresents any material fact and may after notice and opportunity for
21 hearing award reasonable attorney's fees and costs to any party or person who

1 ~~may have become a party but for the false or misleading information or who~~
2 has incurred attorney's fees or costs in connection with the application.

3 ~~(m)(i)~~ After notice and opportunity for hearing, a district commission may
4 withhold a permit or suspend the processing of a permit application for failure
5 of the applicant to pay costs assessed under 3 V.S.A. § 2809₂ related to the
6 participation of the agency of natural resources in the review of the permit or
7 permit application.

8 Sec. 26. 10 V.S.A. § 6028 is amended to read:

9 § 6028. COMPENSATION

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

12 Sec. 27. 10 V.S.A. § 6029 is amended to read:

13 § 6029. ACT 250 PERMIT FUND

14 There is hereby established a special fund to be known as the Act 250
15 permit fund for the purposes of implementing the provisions of this chapter
16 and chapter 220 of this title. Revenues to the fund shall be those fees collected
17 in accordance with subdivisions 6025(b)(1)–(3) and section 6083a of this title,
18 gifts, appropriations, and copying and distribution fees. Revenues to the fund
19 shall also include those fees and costs collected under chapter 220 of this title.
20 The ~~board~~ council shall be responsible for the fund and shall account for
21 revenues and expenditures of the ~~board~~ council. At the commissioner's

1 ~~discretion, the commissioner of finance and management may anticipate~~
2 amounts to be collected and may issue warrants based thereon for the purposes
3 of this section. Disbursements from the fund shall be made through the annual
4 appropriations process to the ~~board, and to the agency of natural resources~~
5 department of environmental quality to support the council, the district
6 coordinators and district commissions under this chapter, and those other
7 programs within the ~~agency~~ department that directly or indirectly assist in the
8 review of Act 250 applications or proceedings before the council. This fund
9 shall be administered as provided in subchapter 5 of chapter 7 of Title 32.

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 council, department, or district commission, or their agents, permission to enter
15 upon the applicant's or petitioner's land for ~~these purposes~~ the purpose of
16 application or jurisdictional opinion review under this chapter or enforcement
17 under this title.

18 * * *

19 (d) The ~~panels of the board~~ council and commissions shall make all
20 practical efforts to process matters before ~~the board and permits them~~ in a
21 prompt manner. The ~~land use panel~~ council shall establish time limits for the

1 ~~processing of land use permits issued under section 6086 of this title as well as~~
2 procedures and time periods within which to notify applicants whether an
3 application is complete. The ~~land use panel~~ council shall report annually by
4 February 15 to the house and senate committees on natural resources and
5 energy and on government operations; and the house committee on fish,
6 wildlife and water resources. The annual report shall assess the performance
7 of the ~~board~~ council and commissions in meeting the limits; identify areas
8 which hinder effective performance; list fees collected for each permit;
9 summarize changes made to improve performance; and describe staffing needs
10 for the coming year. The annual report shall list the number of enforcement
11 actions taken by the ~~land use panel~~ council, the disposition of such cases, and
12 the amount of penalties collected.

13 * * *

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

17 * * *

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

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

5 Sec. 29. 10 V.S.A. § 6085 is amended to read:

6 § 6085. HEARINGS; PARTY STATUS

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

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

10 (A) The applicant;

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

12 (C) The municipality in which the project site is located, and the
13 municipal and regional planning commissions for that municipality; if the
14 project site is located on a boundary, any Vermont municipality adjacent to
15 that border and the municipal and regional planning commissions for that
16 municipality; and the solid waste management district in which the land is
17 located, if the development or subdivision constitutes a facility pursuant to
18 subdivision 6602(10) of this title;

19 (D) Any state agency affected by the proposed project;

1 ~~(E) Any adjoining property owner or other interested person who has~~
2 ~~a particularized interest protected by this chapter that may be affected by an act~~
3 ~~or decision by a district commission.~~

4 * * *

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

1 ~~Sec. 30. 10 V.S.A. § 6086 is amended to read:~~

2 § 6086. ISSUANCE OF PERMIT; CONDITIONS AND CRITERIA

3 * * *

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

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

14 * * *

15 Sec. 31. 10 V.S.A. § 6086b is added to read:

16 § 6086b. PERMIT CONSOLIDATION

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

20 (1) The applicant shall apply to the district commission for a permit
21 under this chapter and all other required permits, certificates, and approvals.

1 ~~from the department on a form issued by the department's executive director~~
2 ~~and approved by the council.~~

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

7 (3) The determination of whether to issue such other permit, certificate,
8 or approval of the department shall not be made by the division or branch of
9 the department that would make the determination absent jurisdiction under
10 this chapter. Instead, such division or branch of the department shall make its
11 recommendation to the district commission. Technical determinations
12 contained in this recommendation shall be entitled to substantial deference in
13 accordance with subsection 6086(d) of this title.

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

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

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

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

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

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

19 (8) With respect to a proceeding for partial findings under subsection
20 6086(b) of this title, review of all other required permits, certificates, or
21 approvals of the department that address the requirements of the findings at

1 ~~issue in the proceeding shall be consolidated with that proceeding in~~
2 ~~accordance with this section.~~

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

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

10 ~~(C) The consolidated consideration of other required permits,~~
11 ~~certificates, or approvals of the department that do not address the~~
12 ~~requirements of the findings at issue may await the consideration of the~~
13 ~~remaining criteria of section 6086 of this title.~~

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

16 * * * Environmental Enforcement * * *

17 Sec. 32. 10 V.S.A. § 8001 is amended to read:

18 § 8001. LEGISLATIVE FINDINGS

19 The general assembly finds it necessary to standardize and enhance the
20 enforcement powers of the ~~secretary of the agency of natural resources and the~~

1 ~~enforcement powers of the land use panel of the natural resources board~~

2 department of environmental quality in order to:

3 * * *

4 Sec. 33. 10 V.S.A. § 8002 is amended to read:

5 § 8002. DEFINITIONS

6 As used in this chapter:

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

10 * * *

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

13 * * *

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

17 * * *

18 (10) ~~“Land use panel” means the land use panel of the board, as~~
19 ~~established under chapter 151 of this title~~ “Director” means the director of
20 environmental enforcement under 3 V.S.A. §§ 2854 and 2880.

21 * * *

1 ~~(12) "Environmental court" or "environmental division" means the~~
2 ~~environmental division of the superior court established by 4 V.S.A. § 30.~~

3 Sec. 34. 10 V.S.A. § 8003 is amended to read:

4 § 8003. APPLICABILITY

5 (a) The ~~secretary~~ director may take action under this chapter to enforce the
6 following statutes and rules, permits, assurances, or orders implementing the
7 following statutes:

8 * * *

9 (b) The ~~secretary's~~ administrative enforcement authority established by this
10 chapter shall supplement any authority of the ~~secretary~~ department or other
11 state agency or department established by the chapters set forth in subsection
12 (a) of this section to initiate criminal proceedings, or civil proceedings under
13 chapters 47, 56, 59, and 159 of this title.

14 * * *

15 Sec. 35. 10 V.S.A. § 8004 is amended to read:

16 § 8004. ENFORCEMENT OF ACT 250; NATURAL RESOURCES

17 In addition to the enforcement of ~~chapter 151 of this title~~ on the ~~secretary's~~
18 director's initiative, the ~~secretary shall~~ director may institute enforcement
19 proceedings under chapter 151 of this title when requested by ~~the land use~~
20 panel a district coordinator or district commission and, when requested by the
21 secretary of natural resources, shall institute enforcement proceedings under a

1 ~~statute identified in subsection 8003(a) of this title that confers authority on the~~
2 ~~department of fish and wildlife or of forests, parks and recreation. The~~
3 ~~secretary and the land use panel shall develop procedures for the cooperative~~
4 ~~enforcement of chapter 151 of this title.~~

5 Sec. 36. 10 V.S.A. § 8016 is amended to read:

6 § 8016. RULEMAKING

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

15 Sec. 37. 10 V.S.A. § 8019 is amended to read:

16 § 8019. ENVIRONMENTAL TICKETING

17 (a) The ~~secretary and the board~~ each council shall have the authority to
18 adopt rules for the issuance of civil complaints for violations of ~~their respective~~
19 the department's enabling statutes or other statutes identified in subsection
20 8003(a) of this title or rules adopted under those statutes that are enforceable in
21 the judicial bureau pursuant to the provisions of chapter 29 of Title 4. Any

1 ~~proposed rule under this section shall include both the full and waiver penalty~~
2 amounts for each violation. The maximum civil penalty for any violation
3 brought under this section shall not exceed \$3,000.00 exclusive of court fees.

4 (b) A civil complaint issued under this section shall preclude the ~~issuing~~
5 ~~entity from~~ director's seeking an additional monetary penalty for the violation
6 specified in the complaint when any one of the following occurs: the waiver
7 penalty is paid, judgment is entered after trial or appeal, or a default judgment
8 is entered. Notwithstanding this preclusion, the ~~agency and the board~~ director
9 may issue additional complaints or initiate an action under chapter 201 of this
10 title, including a monetary penalty when a violation is continuing or is
11 repeated, and may also bring an enforcement action to obtain injunctive relief
12 or remediation and, in such additional action, may recover the costs of bringing
13 the additional action and the amount of any economic benefit the respondent
14 obtained as a result of the underlying violation in accordance with subdivisions
15 8010(b)(7) and (c)(1) of this title.

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

20 * * *

1 ~~Sec. 38. 10 V.S.A. § 8221 is amended to read:~~

2 § 8221. CIVIL ENFORCEMENT

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

13 * * *

14 * * * Appeals * * *

15 Sec. 39. 10 V.S.A. § 8502 is amended to read:

16 § 8502. DEFINITIONS

17 As used in this chapter:

18 * * *

19 (3) ~~“Environmental court or environmental division council” means the~~
20 ~~environmental division of the superior court council established by under~~
21 ~~4 3 V.S.A. § 30 chapter 51.~~

1 ~~(4) "Natural resources board" means the board established under chapter~~
2 ~~151 of this title.~~

3 * * *

4 (7) "Person aggrieved" means a person who alleges an injury to a
5 particularized interest protected by the provisions of law listed in section 8503
6 of this title; attributable to an act or decision by a district coordinator, district
7 commission, the secretary department, the Vermont downtown development
8 board created under 24 V.S.A. § 2792, or the environmental division council
9 that can be redressed by the environmental division council or the supreme
10 court. With respect to an appeal of an act or decision of the department, a
11 district coordinator, or a district commission, "person aggrieved" also means
12 an interested person under subdivision 6001(32) of this title.

13 (8) "~~Secretary~~" "Department" means the secretary of the agency of
14 ~~natural resources or the secretary's duly authorized representative~~ department
15 of environmental quality created under 3 V.S.A. chapter 51. For the purposes
16 of this chapter, "~~secretary~~" "department" shall also mean the ~~commissioner of~~
17 ~~the department of environmental conservation, the commissioner of the~~
18 ~~department~~ departments of forests, parks and recreation; and the ~~commissioner~~
19 ~~of the department~~ of fish and wildlife; with respect to those statutes that refer
20 to the authority of that ~~commissioner~~ or department.

1 ~~Sec. 40. 10 V.S.A. § 8503(e) is amended to read:~~

2 (c) This chapter shall govern:

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

5 ~~(2) All~~ All appeals arising from a designation decision by the Vermont
6 ~~downtown development board under 24 V.S.A. § 2793b, 2793c, or 2793d.~~

7 Sec. 41. 10 V.S.A. § 8504(b) is amended to read:

8 (b) ~~Planning and zoning chapter appeals~~ Appeals under chapters 76A
9 ~~(downtown development) and 117 (municipal and regional planning and~~
10 ~~development) of Title 24.~~

11 (1) Within 30 days of the date of the act or decision, an interested
12 person, as defined in 24 V.S.A. § 4465, who has participated as defined in
13 24 V.S.A. § 4471 in the municipal regulatory proceeding under that chapter
14 may appeal to the environmental ~~division~~ council an act or decision made
15 under that chapter by a board of adjustment, a planning commission, or a
16 development review board; provided, however, that decisions of a
17 development review board under 24 V.S.A. § 4420 with respect to local Act
18 250 review of municipal impacts are not subject to appeal but shall serve as
19 presumptions under chapter 151 of this title.

1 ~~(2) Within 30 days of a designation decision under 24 V.S.A.~~
2 ~~§ 2793b(b), 2793c(e), or 2793d(b), any interested person as defined in this~~
3 ~~subdivision may appeal to the environmental council.~~
4 ~~(A) Any such appellant must have participated before the Vermont~~
5 ~~downtown development board created under 24 V.S.A. § 2792 by submitting~~
6 ~~written comments to that board or appearing at a public hearing or meeting of~~
7 ~~that board and providing oral comments pertaining to the designation at issue.~~
8 ~~(B) For the purpose of this subdivision (2), “interested person” means~~
9 ~~any one of the following:~~
10 ~~(i) A person aggrieved by the decision.~~
11 ~~(ii) The municipality seeking the designation and any municipality~~
12 ~~that is adjacent to the area proposed for the designation.~~
13 ~~(iii) Any person owning or occupying property in or adjacent to~~
14 ~~the area proposed for the designation who can demonstrate a potential physical~~
15 ~~or environmental impact on the person’s interest from the designation and who~~
16 ~~alleges that the designation does not conform to the requirements of the statute~~
17 ~~under which it was issued.~~
18 ~~(iv) Any 10 persons who may be any combination of voters or real~~
19 ~~property owners within the municipality seeking the designation who, by~~
20 ~~signed petition, allege that the designation does not conform to the~~
21 ~~requirements of the statute under which it was issued. Such appellants must~~

1 ~~designate one person to serve as their representative regarding all matters~~
2 related to the appeal.

3 (v) Any department and administrative subdivision of this state
4 owning property or any interest in property within the region or municipality.

5 (vi) The agency of commerce and community development of this
6 state.

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

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

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

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

19 Sec. 42. 10 V.S.A. § 8504(l) through (n) are amended to read:

20 (l) Representation. The ~~secretary~~ department's office of environmental
21 counsel may represent the ~~agency of natural resources~~ department in all

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

10 (m) Precedent. Prior decisions of the environmental board, water resources
11 board, ~~and waste facilities panel, and environmental court or division~~ shall be
12 given the same weight and consideration as prior decisions of the
13 environmental ~~division~~ council.

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

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

18 (2) is a party by right;

19 (3) ~~is the natural resources board, or either panel of the board~~ qualifies
20 as an interested person, as established in subdivision 6001(32) of this title, with
21 respect to appeals of acts or decisions under chapter 151 of this title;

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

2 (5) qualifies as an "interested person," as established in 24 V.S.A.

3 § 4465, with respect to appeals under ~~24 V.S.A.~~ chapter 117 of Title 24; or

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

6 Sec. 43. 10 V.S.A. § 8505(a) is amended to read:

7 (a) Any person aggrieved by a decision of the environmental ~~division~~
8 council pursuant to this ~~subchapter, chapter~~ or any party by right, ~~or the board~~
9 ~~or either panel of the board~~ may appeal to the supreme court within 30 days of
10 the date of the entry of the order or judgment appealed from, provided that:

11 (1) the person was a party to the proceeding before the environmental
12 ~~division~~ council;

13 * * *

14 Sec. 44. 10 V.S.A. § 8507 is added to read:

15 § 8507. FEES

16 (a) All persons filing an appeal to the environmental council under this
17 chapter shall pay a fee of \$250.00, plus any associated publication costs. The
18 council may waive the fee or publication costs if the council finds that the
19 appellant is unable to pay the fee or publication costs. The fee of \$250.00 shall
20 not apply to appeals to the council initiated in the name of the state by public
21 officials authorized to do so.

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

3 * * * Title 24 Provisions (Growth Centers; Municipal and
4 Regional Land Use Planning) * * *

5 Sec. 45. 24 V.S.A. § 2792 is amended to read:

6 § 2792. VERMONT DOWNTOWN DEVELOPMENT BOARD

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

10 (1) the secretary of commerce and community development;

11 (2) the secretary of transportation;

12 (3) the secretary of natural resources;

13 (4) the ~~commissioner of public safety~~ executive director of the

14 department of environmental quality;

15 (5) the state historic preservation officer;

16 (6) a person appointed by the governor from a list of three names
17 submitted by the Vermont Natural Resources Council, the Preservation Trust
18 of Vermont, and Smart Growth Vermont;

19 (7) a person appointed by the governor from a list of three names
20 submitted by the Association of Chamber Executives;

1 ~~(8) three public members representative of local government, one of~~
2 ~~whom shall be designated by the Vermont League of Cities and Towns, and~~
3 ~~two shall be appointed by the governor;~~

4 (9) a member of the Vermont planners association (VPA) designated by
5 the association;

6 (10) ~~the chair of the natural resources board or a representative of the~~
7 ~~land use panel of the natural resources board designated by the chair~~ planning
8 director of the department of environmental quality; and

9 (11) a representative of a regional planning commission designated by
10 the Vermont association of regional planning and development agencies
11 (VAPDA) and an alternate representative designated by VAPDA to enable all
12 applications to be considered by a representative from a regional planning
13 commission other than the one of which the applicant municipality is a
14 member. The alternate designated by VAPDA may vote only when the
15 designated representative does not vote.

16 * * *

17 Sec. 46. 24 V.S.A. § 2793c is amended to read:

18 § 2793c. DESIGNATION OF GROWTH CENTERS

19 * * *

20 (b) Growth center designation application assistance.

1 ~~(1) A subcommittee of the state board, to be known as the growth center~~
2 ~~subcommittee, shall develop and maintain a coordinated preapplication review~~
3 ~~process in accordance with this subdivision (1). The members of the growth~~
4 ~~center subcommittee shall be the members of the state board described under~~
5 ~~subdivisions 2792(a)(1), (6), (7), (9), and (10) of this title and the member~~
6 ~~designated by the Vermont League of Cities and Towns under subdivision~~
7 ~~2792(a)(8) of this title. The growth center subcommittee shall elect a chair~~
8 ~~from among its members. In carrying out its duties, the growth center~~
9 ~~subcommittee shall have the support of the staff of the ~~department~~ departments~~
10 ~~of economic, housing, and community development and of ~~the natural~~~~
11 ~~resources board environmental quality.~~

12 * * *

13 (2) After consultation with the growth center subcommittee and the ~~land~~
14 ~~use panel of the natural resources board~~ department of environmental quality,
15 the commissioner of economic, housing and community development or
16 designee shall prepare a “municipal growth centers planning manual and
17 implementation checklist” to assist municipalities and regional planning
18 commissions to plan for growth center designation. The implementation
19 manual shall identify state resources available to assist municipalities and shall
20 include a checklist indicating the issues that should be addressed by the
21 municipality in planning for growth center designation. The manual shall

1 ~~address other relevant topics in appropriate detail, such as: methodologies for~~
2 ~~conducting growth projections and build-out analyses; defining appropriate~~
3 ~~boundaries that are not unduly expansive; enacting plan policies and~~
4 ~~implementation bylaws that accommodate reasonable densities, compact~~
5 ~~settlement patterns, and an appropriate mix of uses within growth centers;~~
6 ~~planning for infrastructure, transportation facilities, and open space; avoiding~~
7 ~~or mitigating impacts to important natural resources and historic resources; and~~
8 ~~strategies for maintaining the rural character and working landscape outside~~
9 ~~growth center boundaries.~~

10 * * *

11 (e) Designation decision.

12 * * *

13 (3) ~~Within~~ A growth center designation decision of the state board under
14 subdivision (1) of this subsection may be appealed in accordance with chapter
15 220 of Title 10. However, within 21 days of a growth center designation under
16 subdivision (1) of this subsection, a person or entity that submitted written or
17 oral comments to the state board during its consideration of the application for
18 the designated growth center may request that the state board reconsider the
19 designation. Any such request for reconsideration shall identify each specific
20 finding of the state board for which reconsideration is requested and state the
21 reasons why each such finding should be reconsidered. The filing of such a

1 ~~request shall stay the effectiveness of the designation and the period for filing~~
2 an appeal of the designation until the state board renders its decision on the
3 reconsideration request, on which date the full period for filing an appeal shall
4 commence to run. On receipt of such a reconsideration request, the state board
5 shall promptly notify the applicant municipality of the request if that
6 municipality is not the requestor. The state board shall convene at the earliest
7 feasible date to consider the request and shall render its decision on the request
8 within 90 days of the date on which the request was filed.

9 * * *

10 (f) Review by ~~land use panel~~ district commission and issuance of Act 250
11 findings of fact and conclusions of law. Subsequent to growth center
12 designation by the state board, an applicant municipality may submit a request
13 for findings of fact and conclusions of law under specific criteria of 10 V.S.A.
14 § 6086(a) to the ~~land use panel of the natural resources board~~ applicable
15 district commission under chapter 151 of Title 10 for consideration in
16 accordance with the following:

17 * * *

18 (2) The ~~panel~~ district commission shall notify all landowners of land
19 located within the proposed growth center, entities that would be accorded
20 party status ~~before a district commission~~ under 10 V.S.A. § 6085(c)(1)(C) and
21 (D), and all owners of land adjoining the proposed growth center of a hearing

1 ~~on the issue. The panel district commission may fashion alternate and more~~
2 efficient means of providing adequate notice to persons potentially affected
3 under this subdivision. Persons notified may appear at the hearing and be
4 heard, as may any other person who has a particularized interest protected by
5 ~~10 V.S.A. chapter 151 of Title 10~~ that may be affected by the decision.

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

18 (4) During the period of time in which a growth center designation
19 remains in effect, any findings and conclusions issued by the ~~panel~~ district
20 commission or any final adjudication of those findings and conclusions shall
21 be applicable to any subsequent application for approval by ~~a~~ the district

1 ~~commission under chapter 151 of Title 10 and shall be binding upon the~~
2 ~~district commission and the persons provided notice in the land use panel~~
3 ~~district commission proceeding under subdivision (3) of this subsection,~~
4 ~~according to the rules of the land use panel environmental council, provided~~
5 ~~the proposed development project is located within the designated growth~~
6 ~~center.~~

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

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

16 * * *

17 Sec. 47. 24 V.S.A. § 4304 is amended to read:

18 § 4304. PLANNING AND LAND USE MANUAL

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

1 ~~All meetings of the panel, except for deliberative and executive sessions, shall~~
2 be open to the public. The panel shall keep minutes of its proceedings,
3 showing the vote of each member upon each question, or, if absent or failing to
4 vote, indicating this, and shall keep records of its examinations and other
5 official actions, all of which shall be filed immediately in the office of the clerk
6 of the municipality as a public record. For the conduct of any hearing and the
7 taking of any action, a quorum shall be not less than a majority of the members
8 of the panel, and any action of the panel shall be taken by the concurrence of a
9 majority of the panel.

10 * * *

11 Sec. 49. 24 V.S.A § 4463a is added to read:

12 § 4463a. COMPLETENESS OF APPLICATIONS

13 This section applies to all development review applications before an
14 appropriate municipal panel under this chapter. Within 60 days of referral or
15 appeal of an application from the administrative officer, or direct submission
16 of an application by the applicant to an appropriate municipal panel if such is
17 otherwise authorized, the appropriate municipal panel shall issue a
18 determination of whether the application is complete, and failure of the panel
19 to issue such a determination within this period shall be deemed approval and
20 effective on the 61st day. The hearing and notice requirements of subsections
21 4464(a) and (b) of this title shall not apply to the panel's determination and

1 ~~decision on whether an application is complete. If the panel determines that an~~
2 ~~application is incomplete, it shall list each specific item that is missing and~~
3 ~~provide the applicant a reasonable time to amend its application. A decision~~
4 ~~under this section on whether an application is complete shall be in writing and~~
5 ~~shall be sent to the applicant by certified mail.~~

6 Sec. 50. 24 V.S.A. § 4464(b) is amended to read:

7 (b) Decisions.

8 (1)(A) The appropriate municipal panel may recess the proceedings on
9 any application pending submission of additional information. The panel
10 should close the evidence promptly after all parties have submitted the
11 requested information. The panel shall adjourn the hearing and issue a
12 decision within 45 days after the adjournment of the hearing, and failure of the
13 panel to issue a decision within this period shall be deemed approval and shall
14 be effective on the 46th day. Decisions shall be issued in writing and shall
15 include a statement of the factual bases on which the appropriate municipal
16 panel has made its conclusions and a statement of the conclusions. The
17 minutes of the meeting may suffice, provided the factual bases and conclusions
18 relating to the review standards are provided in conformance with this
19 subsection.

20 (B) Notwithstanding any other provision of law, if an appropriate
21 municipal panel has not closed the evidence in the proceeding within 120 days

1 ~~of filing a determination that an application is complete under section 4463a of~~
2 this title, then the panel and the municipality shall be divested of jurisdiction
3 over the application, which shall be transferred immediately to the district
4 commission under 10 V.S.A. chapter 151 for the environmental district in
5 which the proposed use is located. The district commission shall then
6 promptly determine, based on the application as filed, whether to approve,
7 approve with conditions, or deny the application under the applicable bylaw or
8 bylaws. In making this determination, the district commission shall have all
9 the same authority as would the appropriate municipal panel. A district
10 commission decision under this subdivision (1)(B) shall be deemed a decision
11 of the appropriate municipal panel from which jurisdiction was transferred and
12 shall be appealable and enforceable in the same manner as any other decision
13 of that panel.

14 * * *

15 Sec. 51. 24 V.S.A. § 4470 is amended to read:

16 § 4470. SUCCESSIVE APPLICATIONS AND APPEALS; REQUESTS FOR
17 RECONSIDERATION TO AN APPROPRIATE MUNICIPAL
18 PANEL

19 (a) An appropriate municipal panel shall reject a subsequent application for
20 a use that is identical or substantially similar to a use that was proposed for the
21 same property in a prior application on which a final decision was rendered.

1 ~~and appeal was not taken within the period prescribed by law or appeal was~~
2 taken and resolved. This prohibition shall not apply if the subsequent
3 application is substantially changed, including substantial changes proposed to
4 address deficiencies in the prior application.

5 (b) An appropriate municipal panel may reject an appeal or request for
6 reconsideration without hearing and render a decision, which shall include
7 findings of fact, within 10 days of the date of filing of the notice of appeal, if
8 the appropriate municipal panel considers the issues raised by the appellant in
9 the appeal have been decided in an earlier appeal or involve substantially or
10 materially the same facts by or on behalf of that appellant. The decision shall
11 be rendered, on notice given, as in the case of a decision under subdivision
12 4464(b)(3) of this title, and shall constitute a decision of the appropriate
13 municipal panel for the purpose of section 4471 of this title.

14 ~~(b)~~(c) A municipality shall enforce all decisions of its appropriate
15 municipal panels, and further, the superior court, or the environmental division
16 shall enforce such decisions upon petition, complaint or appeal or other means
17 in accordance with the laws of this state by such municipality or any interested
18 person by means of mandamus, injunction, process of contempt, or otherwise.

1 ~~Sec. 52. 24 V.S.A. § 4476 is amended to read:~~

2 § 4476. FORMAL REVIEW OF REGIONAL PLANNING COMMISSION

3 DECISIONS AND MUNICIPAL PLANS AND AMENDMENTS

4 (a) Formal review. A request for formal review of the sufficiency of an
5 adopted regional or municipal plan or amendment, or for formal review of the
6 decision of a regional planning commission with respect to the confirmation of
7 a municipal planning effort, or the decision relating to approval of a municipal
8 plan, shall be to the ~~regional review panel~~ environmental council created under
9 ~~section 4305 of this title. A request for formal review shall be~~ 3 V.S.A. chapter
10 51, and filed within 21 days of adoption of the plan or amendment or the
11 decision.

12 (b) Standing. The following have standing to request formal review or
13 become parties to formal review conducted under this section:

14 (1) a person owning title to property affected by a decision of the
15 regional planning commission who alleges that that decision imposes on that
16 property unreasonable or inappropriate restrictions that significantly impair
17 present or potential use under the particular circumstances of the case;

18 (2)(A) in the case of a regional planning commission decision or a
19 regional plan or amendment, a municipality whose planning effort is the
20 subject of a decision by the regional planning commission, any other

1 ~~municipality within the region, any municipality which adjoins the region, or a~~
2 regional planning commission which adjoins the region;

3 (B) in the case of a municipal plan or amendment, the regional
4 planning commission and any municipality or regional planning commission
5 which adjoins the municipality;

6 (3) any agency, department, or other governmental subdivision of the
7 state owning property or an interest therein within a municipality listed in
8 subdivision (2) of this subsection, and the agency of commerce and community
9 development;

10 (4) any 20 persons who by signed petition allege that ~~the~~ a regional
11 planning commission decision, if confirmed, will not be in accord with the
12 requirements of this chapter, and who own or occupy real property located
13 within any combination of the following:

14 (A) any municipality whose planning effort is the subject of the
15 decision by the regional planning commission; or

16 (B) any municipality which adjoins a municipality whose planning
17 effort is subject of the decision by the regional planning commission;

18 (5) with respect to the sufficiency of an adopted or amended regional or
19 municipal plan, any 20 persons who by signed petition allege that the plan or
20 amendment is not in accord with the requirements of this chapter, and who
21 own or occupy real property that, in the case of a regional plan or amendment,

1 ~~is located within the area that includes the region and the municipalities that~~
2 adjoin the region or, in the case of a municipal plan or amendment, is located
3 within the area that includes the municipality and the adjoining municipalities;

4 (6) the regional planning commission or municipality whose plan,
5 amendment, or decision is the subject of the request for formal review.

6 (c) Procedure; ~~regional review panel~~. Notice of formal review shall be sent
7 by mail to the municipalities within the region, including any municipality
8 whose plan or amendment may be at issue, to the regional planning
9 commission, and to the agency of commerce and community development and
10 shall be accompanied by a statement of all reasons why the appellant believes
11 the plan or opinion to be in error and all issues which the appellant believes to
12 be relevant. Within 30 days of receipt of the notice of formal review, the date
13 for a hearing shall be set and the environmental council shall publish notice of
14 the hearing in a newspaper of general circulation in the applicable region and
15 any municipality whose plan or amendment may be at issue, and shall provide
16 notice in writing of the hearing to individuals and organizations that had
17 requested notice from the regional planning commission under section 4348
18 relating to the adoption of a regional plan and any other individuals or
19 organizations that request such notice. The appellant shall pay the costs of
20 publication. The hearing shall be held within 45 days of receipt of the notice
21 of formal review. Upon motion, for good cause shown, the ~~panel~~

1 ~~environmental council~~ may extend the date of the hearing. Within 20 days of
2 adjournment of the hearing, the ~~regional review panel~~ environmental council
3 shall issue a decision approving, conditionally approving or disapproving the
4 regional ~~or municipal~~ plan or amendment or the opinion with respect to
5 confirmation of the municipal planning effort or approval of the municipal
6 plan. The regional review panel shall be governed by the provisions for
7 contested cases in chapter 25 of Title 3.

8 (d) Issues on formal review.

9 (1) With respect to formal review of the sufficiency of an adopted or
10 amended regional plan, the ~~regional review panel~~ environmental council shall
11 determine:

12 (A) whether the plan contains the elements required by law;

13 (B) whether the plan is compatible with the plans of adjoining
14 regions; ~~and~~

15 (C) whether the plan is consistent with the goals established in
16 section 4302 of this title.

17 (2) With respect to formal review of a regional planning commission
18 decision on the confirmation of a municipal planning effort, the ~~regional~~
19 ~~review panel~~ environmental council shall determine:

1 ~~(A) whether the municipality is engaged in a continuing planning~~
2 process that, within a reasonable time, will attain consistency with the goals
3 established in section 4302 of this title; and

4 ~~(B) whether the municipality is maintaining its efforts to provide~~
5 local funds for municipal and regional planning purposes.

6 (3) With respect to formal review of an adopted or amended municipal
7 plan or a regional planning commission decision on the approval or
8 disapproval of a municipal plan, the ~~regional review panel~~ environmental
9 council shall determine:

10 (A) whether the plan is consistent with the goals established in
11 section 4302 of this title;

12 (B) whether the plan is compatible with its regional plan; and

13 (C) whether the plan is compatible with approved plans of other
14 municipalities in the region.

15 (e) Stays.

16 (1) The filing of a notice of formal review shall not stay the effect of the
17 plan or the decision of the regional planning commission, unless so ordered by
18 the ~~regional review panel~~ environmental council.

19 (2) If notice of formal review of the decision of a regional planning
20 commission to approve or disapprove a municipal plan is filed prior to final
21 adoption of the plan, the ~~regional review panel~~ environmental council shall

1 ~~stay formal review proceedings pending final adoption. The panel, however,~~
2 may proceed with formal review upon the request of the municipality whose
3 plan is the subject of the review.

4 (f) Appeal to supreme court. An appeal from a decision under this section
5 of the ~~regional review panel~~ environmental council shall be to the supreme
6 court.

7 Sec. 53. PERMIT PROCESS WORKING GROUP; REPORT TO
8 LEGISLATURE

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

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

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

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

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

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

7 (E) The Lake Champlain Regional Chamber of Commerce.

8 (F) The Vermont Homebuilders and Remodelers Association.

9 (G) The Vermont Association of Realtors.

10 (H) Vermont Businesses for Social Responsibility.

11 (I) Associated Industries of Vermont.

12 (J) The Vermont Natural Resources Council.

13 (K) The Conservation Law Foundation.

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

15 (M) The Vermont Planners Association.

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

17 (O) Smart Growth Vermont.

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

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

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

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

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

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

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

3 * * * Salaries of Environmental Council * * *

4 Sec. 54. 32 V.S.A. § 1013 is added to read:

5 § 1013. ENVIRONMENTAL COUNCIL

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

12 * * * Repeal of Environmental Division * * *

13 Sec. 55. REPEAL

14 The following are repealed:

15 (1) 4 V.S.A. § 30(a)(1)(D) (environmental division within superior
16 court).

17 (2) 4 V.S.A § 34 (jurisdiction; environmental division).

18 (3) 4 V.S.A. chapter 27 (environmental division).

~~*** Technical Amendments and Statutory Revision ***~~

Sec. 56. 10 V.S.A. § 552 is amended to read:

§ 552. DEFINITIONS

As used in this chapter:

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

* * *

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

* * *

Sec. 57. 10 V.S.A. § 553 is amended to read:

§ 553. AGENCY DEPARTMENT

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

1 ~~Sec. 58. 10 V.S.A. § 752 is amended to read:~~

2 § 752. DEFINITIONS

3 For the purpose of this chapter:

4 (1) ~~“Agency” means the agency of natural resources~~ “Department”
5 means the department of environmental quality or its duly authorized
6 representative.

7 * * *

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

10 Sec. 59. STATUTORY REVISION

11 (a) The office of legislative council is directed to make the following
12 statutory revisions:

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

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

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

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

1 ~~(3) In 3 V.S.A. § 2826 (environmental notice bulletin; handbook),~~

2 ~~replace the term “department of environmental conservation” with~~

3 ~~“department” and replace the term “secretary” with “council.”~~

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

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

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

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

12 ~~(5) Recodify 3 V.S.A. § 2840 (wind energy generation; state lands) as~~
13 ~~3 V.S.A. § 2872a.~~

14 ~~(6) In 3 V.S.A. § 2873(g) (department of environmental conservation),~~
15 ~~replace each reference to “department of environmental conservation” with~~
16 ~~“department of environmental quality.”~~

17 ~~(7) In 10 V.S.A. chapter 8 (geographic information), revise all~~
18 ~~references to the secretary of the agency of natural resources to refer to the~~
19 ~~executive director of the department of environmental quality.~~

20 ~~(8) In 10 V.S.A. chapter 19 (scenery preservation council):~~

1 ~~(A) Revise all references to the department of environmental~~
2 ~~conservation to refer to the department of environmental quality.~~

3 ~~(B) Revise all references to the secretary of the agency of natural~~
4 ~~resources to refer to the executive director of the department of environmental~~
5 ~~quality.~~

6 ~~(9) In 10 V.S.A. §§ 554 through 584 (air pollution control):~~

7 ~~(A) Revise all references to the secretary, the secretary of natural~~
8 ~~resources, and the agency of natural resources to refer to the department of~~
9 ~~environmental quality.~~

10 ~~(B) Delete “and judicial review” from the catchline of 10 V.S.A.~~
11 ~~§ 562.~~

12 ~~(10) In 10 V.S.A. § 703 (state natural resources conservation council),~~
13 ~~revise the reference to the secretary of the agency of natural resources to refer~~
14 ~~to the executive director of the department of environmental quality.~~

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

18 ~~(12) In 10 V.S.A. § 6001, replace all occurrences of “secretary of~~
19 ~~natural resources” and “agency of natural resources” with “department of~~
20 ~~environmental quality.”~~

1 ~~(13) In 10 V.S.A. § 6083a, replace all occurrences of “land use panel”~~
2 ~~with “council.”~~

3 ~~(14) In 10 V.S.A. § 6084(a), replace “the Vermont agency of natural~~
4 ~~resources” with “the department of environmental quality; the agency of~~
5 ~~natural resources.”~~

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

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

8 ~~(B) Replace all occurrences of “environmental conservation~~
9 ~~department” with “department of environmental quality.”~~

10 ~~(C) Replace all occurrences of “environmental division” with~~
11 ~~“council.”~~

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

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

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

15 ~~(C) Revise all references to the environmental division to refer to the~~
16 ~~environmental council.~~

17 ~~(D) Revise all references to an environmental judge to refer to the~~
18 ~~environmental council.~~

19 ~~(E) Revise all references to the agency of natural resources to refer to~~
20 ~~the department of environmental quality.~~

21 ~~(F) Delete all references to the natural resources board.~~

1 ~~(17) In 10 V.S.A. § 8007(e), in the third sentence, replace “its website”~~
2 ~~with “the department’s website.”~~

3 (18) In 10 V.S.A. § 8014:

4 (A) In subsection (a), replace “civil, criminal, or environmental
5 division of the superior court” with “the council or the civil or criminal
6 division of the superior court.”

7 (B) In subsection (c), in the first sentence, after “judicial,” insert “or
8 quasi-judicial.”

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

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

14 (A) “Secretary” with “department.”

15 (B) “Environmental division” with “environmental council.”

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

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

18 (21) In 30 V.S.A. § 248(a)(4)(E):

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

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

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

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

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

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

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

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

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

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

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

13 ~~(A) “Council” means the environmental council created under~~
14 ~~chapter 51 of Title 3.~~

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

17 Sec. 60. TRANSITION AND IMPLEMENTATION

18 ~~(a) Continued jurisdiction over appeals. Notwithstanding the repeal of its~~
19 ~~jurisdictional authority to hear appeals of acts or decisions of the district~~
20 ~~commissions, district coordinators, and the secretary of natural resources or~~
21 ~~under chapter 117 of Title 24, the environmental division shall continue to~~

1 ~~have jurisdiction to complete its consideration of any such act or appeal that is~~
2 pending before it as of February 1, 2012 if, with respect to such act or appeal,
3 mediation or discovery has commenced, a dispositive motion has been filed, or
4 a trial has begun.

5 (b) Existing rules. All rules adopted by the natural resources board and the
6 department of environmental conservation prior to February 1, 2012 shall be
7 deemed to be rules adopted by the environmental council and the department
8 of environmental quality and shall remain in effect until amended or repealed
9 by the environmental council.

10 (c) Pending rules. Notwithstanding the repeal of its enabling authority, the
11 water resources panel shall continue to exist and have jurisdiction with its
12 preexisting membership to complete its consideration of any proposed rules for
13 which, by February 1, 2012, the period for submitting public comments has
14 been completed. Upon adoption, all such rules shall be deemed to be rules
15 adopted by the environmental council and shall remain in effect until amended
16 or repealed by the environmental council.

17 Sec. 61. APPROPRIATIONS; POSITIONS; INITIAL APPOINTMENT OF
18 ENVIRONMENTAL COUNCIL; SUPERVISION OF
19 TRANSITION

20 (a) Effective February 1, 2012, the following positions are transferred to
21 the environmental council and department of environmental quality:

1 ~~(1) The two environmental judges and all regular employees of the~~
2 ~~environmental division.~~

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

4 ~~(3) The secretary and deputy secretary of natural resources, the~~
5 ~~commissioner of environmental conservation, all regular employees of the~~
6 ~~agency of natural resources' central office and administrative services~~
7 ~~division, the department of environmental conservation, and the division of~~
8 ~~geology and mineral resources, and any other regular employees of the agency~~
9 ~~of natural resources who are not employees of the departments of fish and~~
10 ~~wildlife or of forests, parks and recreation.~~

11 ~~(b) Effective February 1, 2012, each of the following is transferred to the~~
12 ~~environmental council and department of environmental quality:~~

13 ~~(1) Except for appropriations and funds specifically of the departments~~
14 ~~of fish and wildlife or of forests, parks and recreation, all appropriations and~~
15 ~~funds associated with the agencies, department, entities, and employees~~
16 ~~described in subdivisions (a)(1) through (3) of this section, including wages,~~
17 ~~personal service expenses, and operating expenses.~~

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

1 (e) Effective February 1, 2012:

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

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

7 (3) The department of environmental quality's director of state land use
8 pursuant to 3 V.S.A. § 2802(b) shall occupy the position of the former
9 executive director of the natural resources board.

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

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

15 (6) The department's chief environmental counsel pursuant to 3 V.S.A.
16 § 2281 shall occupy the position of the former general counsel to the agency
17 of natural resources.

18 (7) The positions of natural resources board associate general counsel
19 for enforcement and permit compliance officer are transferred to the
20 department of environmental quality's division of environmental enforcement,
21 the position of one other natural resources board associate general counsel is

1 ~~transferred to the department's office of environmental counsel, and the~~
2 position of a third natural resources board associate general counsel is
3 transferred to the environmental council to be a staffperson appointed under
4 3 V.S.A. 2287(b).

5 (8) The council's two staff scientists appointed pursuant to 3 V.S.A.
6 § 2287(b) shall occupy the two positions of environmental division law clerk,
7 and the positions shall be reclassified accordingly.

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

11 (10) The position of executive assistant to the secretary of natural
12 resources shall become the position of secretary to the chair of the
13 environmental council.

14 (11) The position of private secretary to the commissioner of
15 environmental conservation shall become the position of secretary to the
16 department's executive director.

17 (12) One natural resources board administrative secretary position is
18 transferred to the department's division of environmental enforcement to be
19 an environmental enforcement officer, and the position shall be reclassified
20 accordingly. This position shall be in addition to all environmental
21 enforcement officer positions in existence as of November 1, 2010.

1 ~~(13) One position from the department of economic, housing and~~
2 ~~community development is transferred to the department of environmental~~
3 ~~quality's planning division to coordinate the division's outreach to and work~~
4 ~~with other state agencies and regional and local entities and to assist in the~~
5 ~~division's provision of training and technical assistance to municipal~~
6 ~~commissions and boards.~~

7 (14) The positions of deputy secretary of natural resources, private
8 secretary to the secretary of natural resources, commissioner of fish and
9 wildlife, and commissioner of forests, parks and recreation are eliminated.

10 (d) As of July 1, 2012, any remaining positions of the former
11 environmental division and natural resources board not included in
12 subsection (c) of this section are eliminated. The environmental council may
13 continue those positions in existence through June 30, 2011, as it may deem
14 necessary to support the completion of work by the former environmental
15 division and natural resources board under the transition for which this act
16 provides.

17 (e) Notwithstanding 3 V.S.A. § 2004, any position shall be recreated
18 effective February 1, 2012 if the position was in existence as of November 1,
19 2010, is described in subsection (c) of this section, and was abolished or
20 eliminated prior to February 1, 2012 by action other than an act of the general
21 assembly. This recreation shall apply regardless of whether the position was

1 ~~vacant as of November 1, 2010. The same recreation shall apply to all~~
2 ~~environmental enforcement officer positions of the department of~~
3 ~~environmental conservation.~~

4 ~~(f) By July 15, 2011, the governor, speaker of the house, and president pro~~
5 ~~tempore of the senate shall appoint the members of the environmental~~
6 ~~appointments committee created under 3 V.S.A. § 2821(b).~~

7 ~~(g) No later than September 1, 2011, the environmental appointments~~
8 ~~committee shall provide the governor with a list of recommended applicants~~
9 ~~for appointment as the chair and members of the environmental council in~~
10 ~~accordance with 3 V.S.A. § 2821(b). No later than October 1, 2011, the~~
11 ~~governor shall appoint the chair and members of the environmental council~~
12 ~~from the list provided by the environmental appointments committee. Each~~
13 ~~such appointment shall be subject to senate confirmation during the~~
14 ~~subsequent legislative session. The period between October 1, 2011 and~~
15 ~~February 1, 2012 shall be added to the initial terms of the chair and the~~
16 ~~council members as provided under 3 V.S.A. § 2821(b). During this period:~~

17 ~~(1) The environmental council shall appoint an executive director of the~~
18 ~~department of environmental quality.~~

19 ~~(2) As it deems reasonably necessary to effect the transition under this~~
20 ~~section, the environmental council shall have authority to reorganize,~~
21 ~~reclassify, recruit, and appoint personnel for positions transferred to it and the~~

1 ~~department of environmental quality under this act. This authority shall be~~
2 subject to subsection (c) of this section and shall continue after February 1,
3 2012.

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

7 (4) The environmental council shall have the authority to direct the
8 agency of natural resources, the department of environmental conservation,
9 and the natural resources board to take such actions as the environmental
10 council deems reasonably necessary to effect the transition under this section.

11 The environmental council shall have the same authority to direct the
12 environmental division to take administrative or other nonjudicial action, but
13 only insofar as necessary to effect the transition.

14 (h) With respect to the state's office complex in Waterbury, effective
15 February 1, 2012 the environmental council shall occupy such office space as
16 it requires in the center building, the executive director shall occupy the office
17 of the former commissioner of environmental conservation in the One South
18 building, and the secretary of natural resources shall occupy the office of the
19 former commissioner of fish and wildlife in the Ten South building.

1 ~~Sec. 62. EFFECTIVE DATES~~

2 ~~This act shall take effect on February 1, 2012, except that:~~

3 ~~(1) Secs. 60 (transition and implementation) and 61 (appropriations,~~
4 ~~positions, initial council appointment, supervision of transition) of this act and~~
5 ~~this section shall take effect on passage.~~

6 ~~(2) In Sec. 5, 3 V.S.A. § 2821(b) through (f) (appointment of~~
7 ~~environmental council) shall take effect on July 1, 2011 to the extent~~
8 ~~necessary for implementation of Sec. 61 of this act.~~

9 ~~(3) Sec. 30 (changes to Act 250 presumption statute) shall take effect~~
10 ~~on February 1, 2013.~~

11 ~~(4) In Sec. 31, 10 V.S.A. § 6086b(1) through (8) (permit consolidation)~~
12 ~~shall take effect on February 1, 2013.~~

** * * Environmental Division, Superior Court * * **

~~*Sec. 1. ENVIRONMENTAL DIVISION AMENDMENTS; PURPOSE
[Deleted]*~~

~~*The purpose of Secs. 2 (environmental division; magistrate) and 3 (access
to information) of this act, which enhance the environmental division of the
superior court (the division), is to increase the speed and accessibility to the
public of appeals before the division by reducing discovery, requiring parties
to exchange relevant information before hearings, and adding a magistrate to
help expedite proceedings in a manner that gives due consideration to the
needs of pro se litigants and to supply the division with an additional judicial
appointee who may decide noncomplex cases and, in complex matters, may
make preliminary decisions and assist in early and rigorous case management.
Secs. 2 and 3 of this act shall be applied consistently with this purpose.*~~

~~*Sec. 2. 4 V.S.A. § 1001 is amended to read: [Deleted]*~~

~~*§ 1001. ENVIRONMENTAL DIVISION*~~

~~(a) The environmental division shall consist of two judges, each sitting alone, and one magistrate.~~

~~(b)(1) Two environmental judges shall be appointed to hear matters in the environmental division and to hear other matters in the superior court when so assigned by the administrative judge pursuant to subsection 21a(c) of this title.~~

~~(2) An environmental magistrate shall be appointed to perform duties that relate solely to matters in the environmental division and that are authorized by rule or an environmental judge. An environmental magistrate may be so authorized to perform one or more of the following:~~

~~(A) Case management.~~

~~(B) Issuing a decision on a procedural issue that does not dispose of a matter, including issuance of a scheduling order and managing discovery.~~

~~(C) Determining whether appeals should be consolidated or coordinated pursuant to 10 V.S.A. § 8504(g).~~

~~(D) Determining whether a matter should be referred for alternative dispute resolution.~~

~~(E) Conducting alternative dispute resolution.~~

~~(F) Issuing a recommended decision on the merits of any matter subject to review and approval by an environmental judge. Prior to such review and approval, the recommended decision shall be served on all parties, and all adversely affected parties shall have an opportunity to file exceptions and present briefs and oral argument to the environmental judge on the recommended decision.~~

~~(G) Issuing a final decision on the merits of a matter that an environmental judge determines is not complex and does not involve questions of facts or law the determination of which is likely to have significant precedential effect.~~

~~(c) An environmental judge and an environmental magistrate shall be an attorney admitted to practice before the Vermont supreme court.~~

~~(1) An environmental judge shall be nominated, appointed, confirmed, paid, and retained, and shall receive all benefits in the manner of a superior judge.~~

~~(2) An environmental magistrate:~~

~~(A) Shall be nominated, appointed, confirmed, and retained in the manner of a superior judge;~~

~~(B) Shall be an exempt employee of the judicial branch, subject to the code of judicial conduct;~~

~~(C) Shall devote full time to his or her duties; and~~

~~(D) Shall be compensated in the same manner as other magistrates in the judicial branch.~~

~~(d) An environmental judge and an environmental magistrate shall be appointed on April 1, for a term of six years or the unexpired portion thereof.~~

~~(e) Evidentiary proceedings in the environmental division shall be held in the county in which all or a portion of the land which is the subject of the appeal is located or where the violation is alleged to have occurred, unless the parties agree to another location; provided, however, that the environmental judge division shall offer expeditious evidentiary hearings so that no such proceedings are moved to another county to obtain an earlier hearing. Unless otherwise ordered by the court, all nonevidentiary hearings may be conducted by telephone or video conferencing using an audio or video record. If a party objects to a telephone hearing, the court division may require a personal appearance for good cause.~~

~~(f) [Repealed.]~~

~~(g) The supreme court may enact rules and develop procedures consistent with this chapter to govern the operation of the environmental division and proceedings in it. In adopting these rules, the supreme court shall ensure that the rules provide for:~~

~~(1) expeditious proceedings that give due consideration to the needs of pro se litigants;~~

~~(2) the ability of the judge to hold pretrial conferences by telephone;~~

~~(3) the use of scheduling orders under the Vermont Rules of Civil Procedure in order to limit discovery to that which is necessary for a full and fair determination of the proceeding; and~~

~~(4) the appropriate use of site visits by the presiding judge or magistrate to assist the court division in rendering a decision.~~

Sec. 3. 4 V.S.A. § 1004 is amended to read:

§ 1004. ACCESS TO INFORMATION

(a) In connection with any evidentiary proceedings under 10 V.S.A. chapter 201 of Title 10 (environmental law enforcement) or 220 (consolidated environmental appeals), each party shall provide all other parties with all written statements and information in the possession, custody, or control of the party relative to the violation, including any technical studies, tests and

reports, maps, architectural and engineering plans and specifications, drawings, graphs, charts, photographs, and other data compilations from which information can be obtained, the names and addresses of the party's witnesses, and any other information which the environmental division deems necessary, in its sole discretion, to a fair and full determination of the proceeding.

(b) No other discovery or depositions, written interrogatories or requests to admit shall be permitted except that which ~~is~~ the environmental division deems necessary, in its sole discretion, for a full and fair determination of the proceeding.

**** Act 250; District Commissioners; Ethical Standards ****

Sec. 4. 10 V.S.A. § 6026 is amended to read:

§ 6026. DISTRICT COMMISSIONERS

(c) Members shall be removable for cause only, except the ~~chairman~~ chair who shall serve at the pleasure of the governor.

(e) The chair and members of a district commission shall comply with the following ethical standards:

(1) The provisions of 12 V.S.A. § 61 (disqualification for interest).

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

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

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

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

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

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

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

(f) As soon as practicable after grounds become known, a party may move to disqualify a district commissioner from a particular matter before the district commission.

(1) The motion shall contain a clear statement of the specific grounds for disqualification and when such grounds were first known.

(2) On receipt of the motion, the district commissioner who is the subject of the motion shall disqualify himself or herself or shall refer the motion to the chair of the board. The chair of the board may disqualify the district commissioner from the matter before the district commission if, on review of the motion, the chair determines that such disqualification is necessary to ensure compliance with subsection (e) (ethical standards) of this section.

(3) On disqualification of a district commissioner under this subsection, the chair of the board shall assign another district commissioner to take the place of the disqualified commissioner. The chair shall consider making such an assignment from among the members of the same district commission before assigning a member of another district commission.

(g) For one year after leaving office, a former appointee to a district commission shall not, for pecuniary gain:

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

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

* * * Party Status; Standing to Appeal * * *

Sec. 5. PARTY STATUS AMENDMENTS; PURPOSE

The purpose of Secs. 6 (party status) and 7 (person aggrieved) of this act is to correct the overly rigorous application of existing standards for party status and standing to appeal exemplified by the decision of *In re Pion Sand and Gravel*, No. 245-12-09 Vtec (July 2, 2010), and to assure that future decisions properly apply these standards. To determine standing, the Vermont supreme court has applied an analysis used by the federal courts under Article III of the United States Constitution. *Parker v. Milton*, 169 Vt. 74 (1998). In addition, Vermont statutes establish who may be a party. For the purpose of 10 V.S.A. §§ 6085(c)(1)(E) (party status; adjoining property owner; other persons) and 8502(7) (person aggrieved), establishing status as a party or “person aggrieved” is distinct from a merits determination. A person need not prove the merits of a claim in order to participate or appeal, but rather need only

demonstrate a reasonable possibility of injury to a particularized interest. The subdivisions amended in Secs. 6 and 7 of this act shall be applied consistently with this purpose.

Sec. 6. 10 V.S.A. § 6085(c) is amended to read:

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

* * *

(E) Any adjoining property owner or other person who ~~has~~ alleges an injury to a particularized interest protected by this chapter that may be affected by an act or decision by a district commission attributable to a proposed development or subdivision. If such an allegation is disputed, the person need only demonstrate that there is a reasonable possibility of injury to a particularized interest.

Sec. 7. 10 V.S.A. § 8502(7) is amended to read:

(7) "Person aggrieved" means a person who alleges an injury to a particularized interest protected by the provisions of law listed in section 8503 of this title, attributable to an act or decision by a district coordinator, district commission, the secretary, or the environmental division that can be redressed by the environmental division or the supreme court. If such an allegation is disputed, the person need only demonstrate that there is a reasonable possibility of injury to a particularized interest.

* * * Recorded Hearings; Pilot Project; Act 250 * * *

Sec. 8. ON THE RECORD PILOT; FINDINGS; PURPOSE

(a) The purpose of Secs. 9 (appeals on the record) and 10 (prospective repeal; report) of this act is to establish a pilot project to test the use of recorded hearings by the Act 250 district commissions that, on appeal to the environmental division, will be subject to a review on the record (OTR) rather than a de novo hearing.

(b) There is disagreement on the use of OTR for appeals to the environmental division from decisions of the district commissions. On the one hand, proponents of OTR argue that, in the case of Act 250, OTR will ensure the primacy of the district commissions in making the decisions and, in cases that are likely to be appealed, avoid duplicative expenditure of time and resources resulting from presenting, on appeal, expert and witness testimony and other evidence already presented. Proponents also argue that OTR enhances citizen participation because a record preserves citizen input before the district commissions and the district commissions are more accessible to citizens than a court. On the other hand, skeptics of OTR argue that it will

result in an overly formal district commission process that will harm citizen participation and increase the cost and time of all district commission proceedings in order to benefit those that are appealed.

(c) The pilot project authorized by this act is intended to test whether OTR can be implemented in a manner that results in the benefits asserted by proponents without the negative impacts raised by skeptics. To this end, it is important that district commissions participating in the project limit recorded proceedings to matters that are likely to be appealed, assure that recorded proceedings are run in the same informal and citizen-friendly manner as other district commission proceedings, make all efforts to resolve and narrow issues for hearing, and assure adequate time and information for all parties to have a fair opportunity to prepare for the hearing.

Sec. 9. 10 V.S.A. § 6085a is added to read:

§ 6085a. APPEALS ON THE RECORD

(a) The districts no. 1, 4, and 5 environmental commissions may hold on-the-record hearings on the motion of any party or on its own motion. Any motion or decision to hold on-the-record hearings shall be made as early as possible during the course of an application and prior to convening a hearing on the merits. Notwithstanding subdivision 6001(4) of this title, for the purpose of this section, "district commission" shall mean the district no. 1, 4, or 5 environmental commission.

(b) The district commission shall schedule a prehearing conference in each matter in which on-the-record hearings may be held to:

- (1) determine whether on-the-record hearings shall be held;
- (2) narrow and specify all issues for hearing;
- (3) establish a fair and adequate schedule for all parties to prepare submissions of information; and
- (4) establish a schedule for and the order of a hearing.

(c) The district commission may hold on-the-record hearings if it determines that:

- (1) the application raises issues that are likely to be contested and appealed;
- (2) on-the-record hearings are likely to result in significant cost and time savings;
- (3) on-the-record hearings would assure complete information and argument for the district commission's consideration;

(4) on-the-record hearings will not unnecessarily burden the parties;
and

(5) on-the-record hearings will not significantly deter citizen
participation and the ability of parties to participate pro se.

(d) In a case in which a district commission decides to hold on-the-record
hearings:

(1) The district commission may request that the parties engage in
alternative dispute resolution in an effort to resolve or narrow issues before
the district commission.

(2) The district commission shall assure that all parties and the district
commission have adequate information in sufficient time to address issues
before the district commission.

(A) The district commission shall require each participating party to
provide the district commission and all other parties with each of the
following:

(i) Written statements and information in the possession, custody,
or control of the party.

(ii) Technical studies, tests and reports, maps, architectural and
engineering plans and specifications, drawings, site plans, graphs, charts,
photographs, and other data or data compilations from which information can
be obtained.

(iii) The names and addresses of the party's witnesses.

(iv) Summaries of all proposed testimony.

(A) The district commission shall require each participating party to
provide the district commission and all other parties with each of the
following:

(i) Written statements and information in the possession, custody,
or control of the party.

(ii) Technical studies, expert reports including the basis and
reasons for each opinion, tests and reports, maps, architectural and
engineering plans and specifications, drawings, site plans, graphs, charts,
photographs, and other data or data compilations from which information can
be obtained.

(iii) The names, addresses, and telephone numbers of the party's
witnesses.

(iv) Fair and accurate summaries of all proposed testimony.

(v) The curriculum vitae of each expert witness, including a list of all other cases in which, during the previous four years, the witness testified as an expert.

(B) The district commission may require each participating party to provide the district commission and all other parties with one or more of the following:

(i) Prefiled testimony.

(ii) Memoranda concerning any issue in controversy.

(iii) Particular information that a party may request by written questions.

(iv) Any other information that the commission deems necessary to a fair and full determination of the proceeding.

(C) The provisions of this subdivision (2) shall be in addition to the provisions of 3 V.S.A. §§ 809, 809a, and 809b.

(3) The district commission shall make every reasonable effort to maintain the procedural informality characteristic of district commission proceedings that are not on-the-record. There shall be flexibility in allowing the introduction of evidence. The district commission shall ensure that all hearings, conferences, and requirements for prehearing submissions are in keeping with the citizen-run and citizen-served process under this chapter, and due consideration and respect shall be given to the needs of all applicants, parties, and pro se parties.

(4) The district coordinator for the district commission shall provide pro se parties with reasonable assistance on procedure before the district commission.

(e) The district commission shall cause on-the-record hearings to be recorded by video. Such recordings shall be at the expense of the board. The board shall provide training and education opportunities, and legal counsel as appropriate, to enable district commissioners to preside successfully at on-the-record hearings.

(f) Notwithstanding sections 6089 and 8504 of this title, there shall be no appeal of a district commission's decision on whether to hold on-the-record hearings.

(g) Notwithstanding subsection 8504(h) of this title, in a matter in which a district commission has elected to hold on the record hearings under this section, the appeal of a decision of the district commission shall be reviewed on the record prepared by the commission. In such an appeal:

(1) The record shall consist of the video recording of the hearing and all documents and materials reviewed or considered by the district commission. The district commission shall forward the record to the environmental division within 20 days of the date the district commission receives the notice of appeal.

(2) The appellant shall bear the burden to demonstrate that the district commission committed reversible error.

(3) No objection that has not been urged before the district commission may be considered by the environmental division, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances.

(4) The findings of the district commission with respect to questions of fact, if supported by substantial evidence on the record as a whole, shall be conclusive.

(5) The environmental division may reverse district commission conclusions or decisions only if they are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.

Sec. 10. PROSPECTIVE REPEAL; REPORT

(a) 10 V.S.A. § 6085a (appeals on the record) shall be repealed on July 1, 2016, except that the section shall remain in effect for an application for a permit under 10 V.S.A. chapter 151 if prior to that date:

(1) The application was filed with the district no. 1, 4, or 5 environmental commission and determined to be complete; and

(2) With respect to the application, a motion for on-the-record hearings was filed or the district commission determined to hold on-the-record hearings under that section.

(b) With respect to the implementation of 10 V.S.A. § 6085a (appeals on the record), the natural resources board shall submit annual reports by January 15 of each year that 10 V.S.A. § 6085a is in effect. In addition, the natural resources board shall submit an evaluation report by January 15, 2014 and a further evaluation report by January 15, 2016. The evaluation report shall be combined with the annual report for the same year.

(1) Each report shall be submitted to the house committee on fish, wildlife and water resources and the house and senate committees on judiciary and on natural resources and energy.

(2) The evaluation reports shall provide a quantitative and qualitative assessment of the use of on-the-record hearings, including the timeliness and manageability of the overall process, any effects on public participation, party feedback, any additional resource demands or efficiencies, and whether to

incorporate or make more use of alternative dispute resolution methods, including intervenor funding, community stakeholder process, and mediation.

(3) The annual reports shall detail the range of projects for which there were on-the-record hearings, the districts in which the hearings were held, the time required and the outcome of completed commission hearings, whether appeals were taken, and if so, by which party, and the time required for the outcome of appellate proceedings before the environmental division.

Sec. 11. AGENCY OF NATURAL RESOURCES; RECORD REVIEW; REPORT

On or before January 15, 2013, the secretary of natural resources shall submit a report to the house committee on fish, wildlife and water resources and the house and senate committees on natural resources and energy on how the secretary might implement on-the-record (OTR) appeals of acts or decisions of the secretary and on affording deference on appeal to those acts or decisions. Such report shall:

(1) Provide data on the number of appeals from those acts or decisions during the preceding three years that went to hearing on the merits and the amount of staff time necessitated by each such appeal.

(2) Detail the changes that the secretary would propose or deem necessary within the agency of natural resources to effect OTR appeals such as revisions to notice requirements or conduct of hearings, preparation of the record, or establishment of internal administrative hearings.

(3) Set out what specific standards of deference, if any, the secretary proposes should apply on appeal of his or her acts or decisions; what internal changes to the agency, if any, should be implemented to support use of those standards; and the extent to which OTR appeals are necessary to effecting one or more of the proposed standards.

(4) Provide the secretary's recommendations and reasons for those recommendations.

Sec. 12. NATURAL RESOURCES BOARD; REPORT; CLIMATE CHANGE; SPRAWL; CUMULATIVE IMPACTS

On or before January 15, 2013, the chair of the natural resources board shall submit a report to the house committee on fish, wildlife and water resources and the house and senate committees on natural resources and energy with recommendations for improving the provisions of and process under 10 V.S.A. chapter 151 (Act 250) with respect to: the issue of climate change due to anthropogenic global warming; preservation of Vermont's settlement pattern of concentrated settlements surrounded by rural countryside and prevention of sprawl and the related loss of agricultural soils and

forestland; and enhancement of the ability of Act 250 to address the cumulative effects of development over time. Prior to submitting this report, the chair shall consult with other state permitting officials, including representatives of the agencies of agriculture, food and markets, of commerce and community development, of natural resources, and of transportation; municipal permitting officials; and members of the public through public meetings, use of the Internet, and other forms of outreach.

~~Sec. 13. JUDICIARY POSITION; APPROPRIATION~~

~~For the purpose of Sec. 2 of this act (environmental division; magistrate):~~

~~(1) The position of environmental magistrate is created within the judicial branch.~~

~~(2) For fiscal year 2013, the sum of \$125,000.00 is appropriated to the judiciary from the general fund.~~

~~Sec. 14. EFFECTIVE DATES; IMPLEMENTATION~~

~~(a) This section and Secs. 1, 3–8, and 10–12 of this act shall take effect on passage.~~

~~(b) Sec. 9 (appeals on the record) shall take effect on July 1, 2012. As of the effective date of this Sec. 14, the natural resources board shall commence planning and training of district commissions for implementation of Sec. 9.~~

~~(c) Secs. 2 (environmental division; magistrate) and 13 (judiciary position; appropriation) of this act shall take effect on July 1, 2012.~~

Sec. 13. JUDICIARY POSITION; APPROPRIATION

The establishment of one new exempt position in the judicial branch of state government—environmental division staff attorney—is authorized in fiscal year 2013. This position shall be converted from an existing law clerk position within the judicial branch. The job duties of the environmental division staff attorney shall be within the environmental division of the superior court and shall include: researching legal issues; drafting legal memoranda; screening and management of division caseload with special attention to complex cases and division backlogs; and supervising law clerks and interns. For the purpose of this section, the sum of \$60,000.00 is appropriated to the judiciary from the general fund for fiscal year 2013.

Sec. 14. EFFECTIVE DATES; IMPLEMENTATION

(a) This section and Secs. 3–8 and 10–12 of this act shall take effect on passage.

(b) Sec. 9 (appeals on the record) shall take effect on July 1, 2012. As of the effective date of this Sec. 14, the natural resources board shall commence planning and training of district commissions for implementation of Sec. 9.

(c) Sec. 13 (judiciary position; appropriation) of this act shall take effect on July 1, 2012.