

Overview, Judiciary Budget, Draft Provisions; Environmental Appeals

March 11, 2015

Office of Legislative Council

Broad summary:

- On Act 250 appeals, the draft would move the intermediate appeal from the Environmental Division to the Natural Resources Board (NRB). The Board would apply its independent judgment to the District Commission's record and hear additional evidence if good cause is shown. The Board would proceed under the Administrative Procedure Act (APA), with appeal on the record from the NRB to the Supreme Court. The language on the Supreme Court appeal is modeled on the deferential standard that applied to the former Environmental Board when it heard Act 250 appeals. The draft does not add positions.
- On Agency of Natural Resources (ANR) appeals, the draft would move the intermediate appeal from the Environmental Division to a hearing officer within the Agency, who would conduct a de novo hearing, under the APA, with appeal on the record to the Supreme Court. The hearing officer would have the power to make a final decision, since the Secretary would be a party. This would be a new process. The draft does not add any positions at ANR.
- Municipal land use appeals would remain with the Environmental Division, which would also continue its original jurisdiction over environmental enforcement cases.

More detailed summary:

1. Secs. E.713 through E.717 would address Act 250 appeals.
 - a. Sec. E.713 adds a definition of "aggrieved person" modeled on a similar definition for appeals to the Environmental Division.
 - b. Sec. E.714 modifies appeals of Act 250 jurisdictional opinions so that the current route for "consideration" by the NRB becomes an appeal, and the current appeal to the Environmental Division from the NRB is eliminated.
 - c. Sec. E.715 modifies appeals of "partial findings" issued by District Commissions so that they go to the NRB and not the Environmental Division.
 - d. Sec. E.716 modifies the general statute governing appeals of District Commissions to provide that they go to the NRB and not the Environmental Division. Many of the provisions on these appeals are moved here from the Environmental Division appeals chapter (10 V.S.A. chapter 220).
 - e. Sec. E.716 also specifies that appeal from the NRB is to the Supreme Court, using language similar to that which applied to the former Environmental Board.
 - f. Sec. E.717 modifies appeals of "partial" findings by the NRB on growth centers so that they go to the Supreme Court.
2. Sec. E.718 would add a new chapter 170 to T 10 to govern Agency of Natural Resources decisions.
 - a. Sec. 7721 sets forth definitions for this chapter, several of which are modeled on what is currently in the Environmental Division appeals chapter.

- b. Sec. 7722 provides for appeal from an ANR decision to an Agency hearing officer appointed by the Secretary, with language regarding ex parte contacts.
 - c. Sec. 7723 sets out a requirement for an appellant to have participated in the ANR permit proceeding, modeled on similar language that applies to Act 250 appeals.
 - d. Sec. 7724 sets out the requirements for notice of appeal, using language currently found in the Environmental Division appeals chapter.
 - e. Sec. 7725 addresses stays on appeal, modeled on language currently found in the Environmental Division appeals chapter.
 - f. Sec. 7726 gives the hearing officer authority to make a final decision and directs that the hearing be de novo and conducted under the APA.
 - g. Sec. 7727 has appeal from the hearing officer on the record to the Supreme Court, using language similar to that which applied to the former Environmental Board.
3. Sec. E. 719 would have the Office of Legislative Council making the revisions necessary to effect the change in appeal routes, including changing all references to ANR appeals to refer to the new chapter 170.
 4. Secs. E.720-E.723 would make the repeals and modifications to the Environmental Division appeals chapter that result from the above.