

1 H.421

2 Introduced by Representatives Ode of Burlington, Belaski of Windsor,  
3 Christie of Hartford, Gannon of Wilmington, Joseph of North  
4 Hero, O'Sullivan of Burlington, Stuart of Brattleboro, and  
5 Wright of Burlington

6 Referred to Committee on

7 Date:

8 Subject: Conservation and development; land use; local bylaws; challenges

9 Statement of purpose of bill as introduced: This bill proposes to amend  
10 24 V.S.A. § 4472 to allow the Environmental Division to hear statutory  
11 challenges to the validity of a local land use bylaw or municipal plan.

12 An act relating to the jurisdiction of the Environmental Division

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

14 Sec. 1. 24 V.S.A. § 4472 is amended to read:

15 § 4472. EXCLUSIVITY OF REMEDY; FINALITY

16 (a) Except as provided in subsections (b) and (c) of this section, the  
17 exclusive remedy of an interested person with respect to any decision or act  
18 taken, or any failure to act, under this chapter or with respect to any one or  
19 more of the provisions of any plan or bylaw shall be the appeal to the  
20 appropriate panel under section 4465 of this title, and the appeal to the

1 Environmental Division from an adverse decision upon such appeal under  
2 section 4471 of this title. The appeal to the Environmental Division, if not on  
3 the record, as allowed under section 4471 of this title, shall be governed by the  
4 Vermont Rules of Civil Procedure and such interested person shall be entitled  
5 to a de novo trial in the Environmental Division. If the appeal to the  
6 Environmental Division is on the record, according to the provisions of section  
7 4471 of this title, it shall be governed by the Vermont Rules of Civil  
8 Procedure. Whether proceeding on the record or de novo, the court shall have  
9 and may exercise all powers and authorities of a Superior Court.

10 (b) The remedy of an interested person with respect to the constitutionality  
11 of any one or more of the provisions of any bylaw or municipal plan shall be  
12 governed by the Vermont Rules of Civil Procedure with a de novo trial in the  
13 Superior Court, unless the issue arises in the context of another case under this  
14 chapter, in which instance it may be raised in the Environmental Division. The  
15 remedy of an interested person with respect to the validity of any bylaw or  
16 municipal plan based on a failure to comply with the statutory requirements for  
17 adopting or amending such bylaw or plan shall be a de novo trial in the  
18 Environmental Division. In such the cases described in this subsection,  
19 hearings before the appropriate municipal panel shall not be required. This  
20 section shall not limit the authority of the Attorney General to bring an action  
21 before the Environmental Division under section 4453 of this title, with respect

1 to challenges to housing provisions in bylaws. This section does not allow a  
2 challenge to a decision of an administrative officer or appropriate municipal  
3 panel that has become final pursuant to subsection (d) of this section.

4 (c) The provisions of this section shall not be construed as preventing  
5 appeals to the Supreme Court in accordance with the Vermont Rules of Civil  
6 Procedure and the Vermont Rules of Appellate Procedure.

7 (d) Upon the failure of any interested person to appeal to an appropriate  
8 municipal panel under section 4465 of this title, or to appeal to the  
9 Environmental Division under section 4471 of this title, all interested persons  
10 affected shall be bound by that decision or act of that officer, the provisions, or  
11 the decisions of the panel, as the case may be, and shall not thereafter contest,  
12 either directly or indirectly, the decision or act, provision, or decision of the  
13 panel in any proceeding, including any proceeding brought to enforce this  
14 chapter.

15 Sec. 2. EFFECTIVE DATE

16 This act shall take effect on July 1, 2017.