

1 19-0040 Hybrid 2 Board Language

2 § 6021. BOARD; VACANCY, REMOVAL

3 (a) A Natural Resources Board is created.

4 (~~1~~) The Board shall consist of ~~five~~ three members nominated, appointed
5 ~~by the Governor, with the advice and consent of the Senate, and confirmed in~~
6 the manner of a Superior judge so that ~~one~~ each appointment expires in ~~each~~ a
7 different year. The Board members shall be full-time employees. In making
8 these appointments, ~~the Governor and the Senate shall give consideration to~~
9 candidates shall be sought who have experience, expertise, or skills relating to
10 the environment or land use environmental science, natural resources law and
11 policy, land use planning, community development, environmental justice, or
12 racial equity.

13 (~~A~~) ~~The Governor shall appoint a chair of the Board, a position that~~
14 ~~shall be a full-time position~~ appointing authority shall ensure, to the extent
15 possible, that the Board membership reflects the racial, ethnic, gender, and
16 geographic diversity of the State.

17 (~~B~~) Following initial appointments, the members, ~~except for the~~
18 ~~Chair,~~ shall be appointed for terms of ~~four~~ six years.

19 (~~2~~) ~~The Governor shall appoint up to five persons, with preference given~~
20 ~~to former Environmental Board, Natural Resources Board, or District~~

1 ~~Commission members, with the advice and consent of the Senate, to serve as~~
2 ~~alternates for Board members.~~

3 ~~(A) Alternates shall be appointed for terms of four years, with initial~~
4 ~~appointments being staggered.~~

5 (B) The Chair of the Board may assign ~~alternates~~ District
6 Commissioners to sit on specific matters before the Board, in situations where
7 fewer than five members are available to serve.

8 (b) ~~Any vacancy occurring in the membership of the Board shall be filled~~
9 ~~by the Governor for the unexpired portion of the term. Terms; vacancy;~~
10 succession. The term of each appointment subsequent to the initial
11 appointments described in subsection (a) of this section shall be four years.
12 Any appointment to fill a vacancy shall be for the unexpired portion of the
13 term vacated. A member wishing to succeed himself or herself in office may
14 seek reappointment under the terms of this section.

15 (c) Removal. Notwithstanding the provisions of 3 V.S.A. § 2004, the Chair
16 and members shall be removable for cause only, except the Chair, who shall
17 serve at the pleasure of the Governor.

18 (d) ~~The Chair of the Board, upon request of the Chair of a District~~
19 ~~Commission, may appoint and assign former Commission members to sit on~~
20 ~~specific Commission cases when some or all of the regular members and~~
21 ~~alternates of the District Commission are disqualified or otherwise unable to~~

1 ~~serve.~~ Retirement from office. When a Board member who hears all or a
2 substantial part of a case retires from office before the case is completed, he or
3 she shall remain a member of the Board for the purpose of concluding and
4 deciding that case and signing the findings and judgments involved. A retiring
5 Chair shall also remain a member for the purpose of certifying questions of law
6 if a party appeals to the Supreme Court.

7 § 6022. PERSONNEL

8 (a) Regular personnel. The Board may ~~appoint~~ retain legal counsel,
9 scientists, engineers, experts, investigators, temporary employees, and
10 administrative personnel, as it finds necessary in carrying out its duties, unless
11 the Governor shall otherwise provide and may authorize the District
12 Commissions to retain personnel to assist on matters within its jurisdiction,
13 including oversight and monitoring of permit compliance. Personnel
14 employed by the District Commissions pursuant to this subsection shall not
15 report to the Board.

16 (b) Personnel for particular proceedings.

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

20 (A) to assist the Board in any proceeding before it under this
21 chapter; and

1 (B) to monitor compliance with any formal opinion of the Board
2 or a District Commission.

3 (2) The personnel authorized by this section shall be in addition to the
4 regular personnel of the Board. The Board shall fix the amount of
5 compensation and expenses to be paid to such additional personnel.

6 * * *

7 § 6026. DISTRICT COMMISSIONERS

8 (a) For the purposes of the administration of this chapter, the State is
9 divided into nine districts.

10 * * *

11 (b) A District Environmental Commission is created for each district. Each
12 District Commission shall consist of three members from that district
13 appointed in the month of February by the Governor so that two appointments
14 expire in each odd-numbered year. Two of the members shall be appointed for
15 a term of four years, and the Chair (third member) of each District shall be
16 appointed for a two-year term. In any district, the Governor may appoint not
17 more than four alternate members from that district whose terms shall not
18 exceed two years, who may hear any case when a regular member is
19 disqualified or otherwise unable to serve. The Governor shall ensure, to the
20 extent possible, that appointments are made in a timely manner and that each

1 District Commission includes the racial, ethnic, gender, and geographic
2 diversity of the State.

3 (c) Members shall be removable for cause only, except the Chair, who shall
4 serve at the pleasure of the Governor.

5 (d) Any vacancy shall be filled by the Governor for the unexpired period of
6 the term.

7 (e) The Chair of the Board may appoint and assign District Commissioners
8 to sit on specific cases when some or all of the regular members and alternates
9 of the Board are disqualified or otherwise unable to serve.

10 § 6027. POWERS

11 (a) The Board and District Commissions shall have supervisory authority in
12 environmental matters respecting projects within their jurisdiction and shall
13 apply their independent judgment in determining facts and interpreting law.

14 They each shall have the power, with respect to any matter within its
15 jurisdiction, to:

16 (1) administer oaths, take depositions, subpoena and compel the
17 attendance of witnesses, and require the production of evidence;

18 (2) allow parties to enter upon lands of other parties for the purposes of
19 inspecting and investigating conditions related to the matter before the Board
20 or Commission;

1 (3) enter upon lands for the purpose of conducting inspections,
2 investigations, examinations, tests, and site evaluations as it deems necessary
3 to verify information presented in any matter within its jurisdiction; and

4 (4) apply for and receive grants from the federal government and from
5 other sources.

6 (b) The powers granted under this chapter are additional to any other
7 powers ~~which~~ that may be granted by other legislation.

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

13 (d) At the request of a District Commission, if the Board Chair determines
14 that the workload in the requesting district is likely to result in unreasonable
15 delays or that the requesting District Commission is disqualified to hear a case,
16 the Chair may authorize the District Commission of another district to sit in the
17 requesting district to consider one or more applications.

18 (e) The Natural Resources Board may by rule allow joint hearings to be
19 conducted with specified State agencies or specified municipalities.

20 (f) The Board may publish or contract to publish annotations and indices of
21 the decisions of the Environmental Division, and the text of those decisions.

1 The published product shall be available at a reasonable rate to the general
2 public and at a reduced rate to libraries and governmental bodies within the
3 State.

4 (g) The Natural Resources Board shall manage the process by which land
5 use permits are issued under section 6086 of this title, may initiate enforcement
6 on related matters; under the provisions of chapters 201 and 211 of this title,
7 and may petition the Environmental Division for revocation of land use
8 permits issued under this chapter. Grounds for revocation are:

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

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

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

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

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

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

1 (h) The Natural Resources Board may hear appeals of fee refund requests
2 under section 6083a of this title.

3 (i) The Chair, subject to the direction of the Board, shall have general
4 charge of the offices and employees of the Board and the offices and
5 employees of the District Commissions.

6 ~~(j) The Natural Resources Board may participate as a party in all matters~~
7 ~~before the Environmental Division that relate to land use permits issued under~~
8 ~~this chapter. [Repealed.]~~

9 * * *

10 (n)(1) The Board may delegate to district coordinators authority:

11 (A) to determine whether an application is for a major or minor
12 permit;

13 (B) to issue minor permits, minor permit amendments, and
14 administrative amendments; and

15 (2) The Board may delegate to District Commissions or district
16 coordinators any additional authority necessary for the effective administration
17 of this chapter.

18 § 6084. NOTICE OF APPLICATION; PREAPPLICATION PROCESS;

19 HEARINGS; COMMENCEMENT OF REVIEW

20 (a) The plans for the construction of any development or subdivision
21 subject to the permitting requirements of this chapter must be submitted by the

1 applicant to the District Commission, municipal and regional planning
2 commissions, affected State agencies, and adjoining landowners no less than
3 30 days prior to filing an application under this chapter, unless the municipal
4 and regional planning commissions and affected state agencies waive such
5 requirement.

6 (1) The District Commission may hold a meeting on the proposed plans
7 and the municipal or regional planning commission may take one or more of
8 the following actions:

9 (A) Make recommendations to the applicant within 30 days.

10 (B) Once the application is filed with the District Commission, make
11 recommendations to the District Commission by the deadline established in the
12 applicable provision of this section, Board rule, or scheduling order issued by
13 the District Commission.

14 (2) The application shall address the substantive written comments and
15 recommendations made by the planning commissions related to the criteria of
16 subsection 6086(a) of this title received by the applicant and the substantive
17 oral comments related to those criteria made at a public hearing under
18 subdivision (1) of this subsection.

19 (3) This subsection shall not apply to a project that have been designated
20 as using simplified procedures pursuant to 6025(b)(1) or an administrative
21 amendment.

1 ~~(b) On or before the date of~~ Upon the filing of an application with the
2 District Commission, the ~~applicant~~ District Commission shall send, by
3 electronic means, notice ~~and a copy of the initial~~ application to the owner of
4 the land if the applicant is not the owner; the municipality in which the land is
5 located; the municipal and regional planning commissions for the municipality
6 in which the land is located; the Vermont Agency of Natural Resources; and
7 any adjacent Vermont municipality and municipal and regional planning
8 commission if the land is located on a municipal or regional boundary. The
9 ~~applicant shall furnish to the District Commission the names of those furnished~~
10 ~~notice by affidavit, and shall post,~~ send by electronic means a copy of the
11 notice ~~in~~ to the town clerk's office of the town or towns in which the project
12 lies. The town clerk shall post the notice in the town office. The applicant
13 shall also provide a list of adjoining landowners to the District Commission.
14 Upon request and for good cause, the District Commission may authorize the
15 applicant to provide a partial list of adjoining landowners in accordance with
16 Board rules.

17 ~~(b)~~(c) Upon an application being ruled complete, the District Commission
18 shall determine whether to process the application as a major application with
19 a required public hearing or process the application as a minor application with
20 the potential for a public hearing in accordance with Board rules.

1 (1) For major applications, the ~~District Commission~~ Board shall provide
 2 notice not less than 10 days prior to any scheduled hearing or prehearing
 3 conference to: the applicant; the owner of the land if the applicant is not the
 4 owner; the municipality in which the land is located; the municipal and
 5 regional planning commissions for the municipality in which the land is
 6 located; any adjacent Vermont municipality and municipal and regional
 7 planning commission if the land is located on a municipal or regional
 8 boundary; adjoining landowners as deemed appropriate by the ~~District~~
 9 ~~Commission~~ Board pursuant to the rules of the Board, and any other person the
 10 ~~District Commission~~ Board deems appropriate.

* * *

12 ~~(e)~~(d) Anyone required to receive notice of commencement of minor
 13 application review pursuant to subsection ~~(b)~~(c) of this section may request a
 14 ~~hearing that an application be treated as a major~~ by filing a request within the
 15 public comment period specified in the notice pursuant to Board rules. The
 16 ~~District Commission Board~~, on its own motion, may order a ~~hearing that an~~
 17 application be treated as a major within 20 days of notice of commencement of
 18 minor application review.

19 ~~(d)~~(e) Any hearing or prehearing conference for a major application shall
 20 be held within 40 days of receipt of a complete application; or within 20 days
 21 of the end of the public comment period specified in the notice of minor

1 application review if the District Commission determines that it is appropriate
2 to ~~hold a hearing for a minor application~~ treat the application as a major
3 application. Any hearing required shall be held in the municipality where the
4 project is located unless the parties agree to an alternate location. When
5 conducting hearings and prehearing conferences, the Board shall exercise
6 reasonable flexibility with its rules of procedure and of evidence to maximize
7 pro se participation while ensuring the fairness of the proceeding.

8 ~~(e)(f)~~ Any notice ~~for a major or minor application~~, as required by this
9 section, shall also be published by the District Commission in a local
10 newspaper generally circulating in the area where the development or
11 subdivision is located and on the Board's website not more than ten days after
12 receipt of a complete application.

13 * * *

14 ~~(f)(g)~~ This subsection concerns an application for a new permit amendment
15 to change the conditions of an existing permit or existing permit amendment in
16 order to authorize the construction of a priority housing project described in
17 subdivision 6081(p)(2) of this title.

18 * * *

19 ~~(g)(h)~~ When an application concerns the construction of improvements for
20 one of the following, the application shall be processed as a minor application
21 in accordance with subsections ~~(b)(c)~~ through ~~(e)(f)~~ of this section:

1 § 6084a. PERMIT HEARINGS

2 (a) When an application is deemed to be for a major permit, the Board shall
3 convene a hearing in the municipality where the project is located.

4 (b) The Board and two members of the District Commission from the
5 District where the project is located shall hear the parties to the application and
6 decide the findings of fact and questions of law. The Board and the two
7 District Commissioners shall issue a decision on the permit.

8 (c) Upon appeal to the Supreme Court, its findings of fact shall be accepted
9 unless clearly erroneous.

10 (d)(1) The Board shall allow all members of the public to attend each of its
11 hearings unless the hearing is for the sole purpose of considering information
12 to be treated as confidential pursuant to a protective order duly adopted by the
13 Board.

14 (2) The Board shall make all reasonable efforts to ensure that the
15 location of each hearing is sufficient to accommodate all members of the
16 public seeking to attend.

17 (3) The Board shall ensure that the public may safely attend the hearing,
18 including obtaining such resources as may be necessary to fulfill this
19 obligation.

1 (e) Hearing officers. One Board member or any officer or employee of the
2 Board duly appointed by the Chair of the Board may inquire into and examine
3 any matter within the jurisdiction of the Board.

4 (1) A hearing officer may hold a hearing on any matter within the
5 jurisdiction of the Board.

6 (2) Hearings conducted by a hearing officer shall be in accordance with
7 3 V.S.A. §§ 809–814. A hearing officer may administer oaths and exercise the
8 powers of the Board necessary to hear and determine a matter for which the
9 officer was appointed. A hearing officer shall report his or her findings of fact
10 in writing to the Board in the form of a proposal for decision. A copy shall be
11 served upon the parties pursuant to 3 V.S.A. § 811. However, judgment on
12 those findings shall be rendered only by a majority of the Board and the
13 District Commissioners.

14 (f) Completion of case. A case shall be deemed completed when the Board
15 and District Commissioners enter a final decision even though that decision is
16 appealed to the Supreme Court and remanded by that Court.

17 (f) Court of record; jurisdiction. The Board shall have the powers of a
18 court of record in the determination and adjudication of all matters within its
19 jurisdiction. It may initiate proceedings on any matter within its jurisdiction.
20 It may render judgments and enforce the same by any suitable process issuable
21 by courts in this State. An order issued by the Board on any matter within its

1 jurisdiction shall have the effect of a judicial order. The Board's jurisdiction
2 shall include:

3 (1) the issuance of declaratory rulings on the applicability of this chapter
4 and rules or orders issued under this chapter pursuant to 3 V.S.A. § 808; and

5 (2) the issuance of decisions on appeals pursuant to section 6089 of this
6 title.

7 § 6089. APPEALS

8 ~~(a) Appeals of any act or decision of a District Commission under this~~
9 ~~chapter or a district coordinator under subsection 6007(c) of this title shall be~~
10 ~~made to the Environmental Division Board in accordance with chapter 220 of~~
11 ~~this title. For the purpose of this section, a decision of the Chair of a District~~
12 ~~Commission under section 6001e of this title on whether action has been taken~~
13 ~~to circumvent the requirements of this chapter shall be considered an act or~~
14 ~~decision of the District Commission~~ Appeals of certain actions to the Natural
15 Resources Board.

16 (1) Applicability. The following acts or decisions are appealable de
17 novo to the Board:

18 (A) a jurisdictional opinion issued by a district coordinator;

19 (B) a determination that an application is a minor application or
20 administrative amendment by a District Commission;

1 (C) a determination by a regional planning as to the sufficiency of
2 municipal bylaws pursuant to subdivision 6001(3)(A)(xiii);

3 (D) a determination by a regional planning commission made
4 pursuant to 24 V.S.A. § 4350; and

5 (E) A determination by the Downtown Development Board
6 designating a downtown development district or neighborhood development
7 district pursuant to 24 V.S.A. chapter 76A.

8 (2) Procedure.

9 (A) An appeal under this subsection (a) may be brought by any
10 person aggrieved. As used in this subdivision, “person aggrieved” means a
11 person who alleges an injury to a particularized interest protected by the
12 provisions of law listed in this chapter, attributable to an act or decision by a
13 district coordinator, District Commission, Downtown Development Board,
14 regional planning commission, or the Board that can be redressed by the
15 Board.

16 (B) A notice of appeal must be filed within 30 days of the act or
17 decision.

18 (C) The Board shall conduct all appeals under this section as
19 contested cases pursuant to 3 V.S.A. chapter 25 using the procedural rules
20 adopted by the Board.

1 (b) Appeals of decisions of the Board. A party aggrieved by the final
2 order, judgment, or decree of the Board may appeal to the Supreme Court.
3 However, the Board, in its discretion and before final judgment, may permit an
4 appeal to be taken by any party to the Supreme Court for determination of
5 questions of law in such manner as the Supreme Court may by rule provide for
6 appeals before final judgment from a Superior Court.

7 § 6094. ASSESSMENT OF COSTS

8 (a)(1) The Board may authorize itself or the Agency of Agriculture, Food
9 and Markets, Agency of Commerce and Community Development, Agency of
10 Natural Resources and its Departments, or Agency of Transportation to retain
11 legal counsel, official stenographers, expert witnesses, advisors, temporary
12 employees, and other research, scientific, or engineering services in addition to
13 its regular personnel necessary for the review, processing, and adjudication of
14 any permit application specific proceeding. With respect to the Agencies:

15 (A) additional personal may be retained only after approval of the
16 Governor; and

17 (B) after notice to the applicant, including an estimate of the duration
18 and costs of the personnel and services.

19 (2) The Agency retaining the additional personnel shall fix the amount
20 of compensation and expenses to be paid to the personnel retained under this

1 subdivision. Costs of additional personnel obtained under this subdivision
2 may be allocated to the applicant by the Agency or the Board.

3 (3) Notwithstanding any other provision of law, the Agency of
4 Agriculture, Food and Markets, Agency of Commerce and Community
5 Development, Agency of Natural Resources and its Departments, or Agency of
6 Transportation shall have the authority to bill the applicant for the costs of
7 participating in any major proceeding before the Board, including the costs of
8 employee application review, submissions, comments, and testimony before
9 the Board. An Agency may recover those costs from the applicant after notice
10 to the applicant, including an estimate of the costs of the personnel or services.

11 (4) From time to time, the Board or Agency charging an applicant for
12 personnel or services under this section shall provide the applicant with
13 detailed statements showing the amount of money expended or contracted for
14 in the work of such personnel and services. All funds collected from
15 applicants under this section shall be paid directly to the Board, Agency, or
16 Department.

17 (5) The Board shall, upon petition of an applicant to which costs are
18 allocated, review and determine, after opportunity for hearing, the
19 reasonableness of such costs. The Board shall consider the size and
20 complexity of the project and may revise such cost allocations if determined
21 unreasonable.

1 (6) Nothing in this section shall confer authority on the Board to select
2 or hire the personnel unless such personnel are retained by the Board.

3 (b) Prior to allocating costs, the Board shall make a determination of the
4 purpose and use of the funds, identify the recipient of the funds, provide for
5 allocation of costs to the applicant, indicate an estimated duration of the
6 retention of personnel whose costs are being allocated, and estimate the total
7 costs to be imposed. With the approval of the Board, such estimates may be
8 revised as necessary.

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