

1 H.492

2 Introduced by Representatives Sheldon of Middlebury and Bongartz of

3 Manchester

4 Referred to Committee on

5 Date:

6 Subject: Conservation and development; land use; natural resources; Act 250;

7 Natural Resources Board; appeals

8 Statement of purpose of bill as introduced: This bill proposes to change the
9 name of the Natural Resources Board to the Environmental Review Board and
10 give it the authority to hear appeals from the District Commissions and district
11 coordinators in addition to the Board's current duties. The Environmental
12 Division of the Superior Court will continue to hear appeals from other
13 environmental permits, enforcement, and local zoning appeals. Members of
14 the Environmental Review Board would be appointed the same way as
15 Superior Court judges, with the Judicial Nominating Board reviewing the
16 candidates. After the members of the Board are appointed, the Board would
17 adopt rules of procedure for appeals and would report back to the General
18 Assembly with recommendations to update Act 250.

19 An act relating to the structure of the Natural Resources Board

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

2 * * * Natural Resources Board * * *

3 Sec. 1. 10 V.S.A. § 6021 is amended to read:

4 § 6021. BOARD; VACANCY; REMOVAL

5 (a) ~~A Natural Resources~~ The Environmental Review Board is created to
6 administer the Act 250 program and hear appeals.

7 (1) The Board shall consist of five members nominated, appointed by
8 ~~the Governor, with the advice and consent of the Senate, and confirmed in the~~
9 manner of a Superior Court judge so that one appointment expires in each
10 year. The Chair shall be a full-time position, and the other four members shall
11 be half-time positions. In making these appointments, ~~the Governor and the~~
12 Senate shall give consideration to candidates shall be sought who have
13 experience, expertise, or skills relating to the environment or land use one or
14 more of the following areas: environmental science, natural resources law and
15 policy, land use planning, community planning, or environmental justice.

16 (A) ~~The Governor shall appoint a chair of the Board, a position that~~
17 shall be a full-time position Board membership shall reflect, to the extent
18 possible, the racial, ethnic, gender, and geographic diversity of the State.

19 (B) Following initial appointments, the members, ~~except for the~~
20 Chair, shall be appointed for terms of four five years. The initial appointments
21 shall be for staggered terms.

1 ~~(2) The Governor shall appoint up to five persons, with preference~~
2 ~~given to former Environmental Board, Natural Resources Board, or District~~
3 ~~Commission members, with the advice and consent of the Senate, to serve as~~
4 ~~alternates for Board members.~~

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

7 ~~(B) The Chair of the Board may assign alternates to sit on specific~~
8 ~~matters before the Board in situations where fewer than five members are~~
9 ~~available to serve. [Repealed.]~~

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

17 ~~(c) Removal. Notwithstanding the provisions of 3 V.S.A. § 2004, members~~
18 ~~shall only be removable for cause only, except the Chair, who shall serve at the~~
19 ~~pleasure of the Governor after notice and a hearing.~~

20 ~~(d) Disqualified members. The Chair of the Board, upon request of the~~
21 ~~Chair of a District Commission, may appoint and assign former Commission~~

1 ~~members to sit on specific Commission cases when some or all of the regular~~
2 members and alternates of the District Commission are disqualified or
3 otherwise unable to serve.

4 (e) Retirement from office. When a Board member who hears all or a
5 substantial part of a case retires from office before the case is completed, the
6 member shall remain a member of the Board for the purpose of concluding
7 and deciding that case and signing the findings and judgments involved. A
8 retiring Chair shall also remain a member for the purpose of certifying
9 questions of law if a party appeals to the Supreme Court.

10 (f) Completion of case. A case shall be deemed completed when the Board
11 enters a final decision even though that decision is appealed to the Supreme
12 Court and remanded by that Court.

13 (g) Court of record; jurisdiction. The Board shall have the powers of a
14 court of record in the determination and adjudication of all matters within its
15 jurisdiction. It may initiate proceedings on any matter within its jurisdiction.
16 It may render judgments and enforce the same by any suitable process issuable
17 by courts in this State. An order issued by the Board on any matter within its
18 jurisdiction shall have the effect of a judicial order. The Board's jurisdiction
19 shall include.

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

4 ~~(2) the issuance of decisions on appeals pursuant to sections 6007 and~~
5 ~~6089 of this title~~

6 ~~(h) Hearing officers. One Board member or employee of the Board duly~~
7 ~~appointed by the Chair of the Board may inquire into and examine any matter~~
8 ~~within the jurisdiction of the Board.~~

9 ~~(1) A hearing officer may hold any hearing on any matter within the~~
10 ~~jurisdiction of the Board.~~

11 ~~(2) Hearings conducted by a hearing officer shall be in accordance with~~
12 ~~3 V.S.A. §§ 809–816. A hearing officer may administer oaths and exercise the~~
13 ~~powers of the Board necessary to hear and determine a matter for which the~~
14 ~~officer was appointed. A hearing officer shall report findings of fact in writing~~
15 ~~to the Board in the form of a proposal for decision. A copy shall be served~~
16 ~~upon the parties pursuant to 3 V.S.A. § 811. However, judgment on those~~
17 ~~findings shall be rendered only by a majority of the Board.~~

18 ~~(3) The hearing officer shall report findings of fact and conclusions of~~
19 ~~law in writing to the Board. A copy of the proposed decision shall be served~~
20 ~~on the parties pursuant to 3 V.S.A. § 811 but shall be subject to a final decision~~

1 ~~by the Board. The parties shall have 15 days to request oral argument before~~
2 the Board.

3 Sec. 2. 10 V.S.A. § 6025 is amended to read:

4 § 6025. RULES

5 (a) The Board may adopt rules of procedure for itself and the District
6 Commissions. The Board shall adopt rules of procedure that govern appeals
7 and other contested cases before it and are consistent with this chapter.

8 * * *

9 Sec. 3. 10 V.S.A. § 6027 is amended to read:

10 § 6027. POWERS

11 (a) The Board and District Commissions ~~each~~ shall have supervisory
12 authority in environmental matters respecting projects within their jurisdiction
13 and shall apply their independent judgment in determining facts and
14 interpreting law. Each shall have the power, with respect to any matter within
15 its 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~~ shall establish such
9 regional offices ~~as it deems necessary in each district established pursuant to~~
10 subsection 6026(a) of this title to implement the provisions of this chapter and
11 the rules adopted hereunder. Each regional office shall have at least one
12 District Coordinator working in it. The Natural Resources Board may
13 designate or require a regional planning commission to receive applications,
14 provide administrative assistance, perform investigations, and make
15 recommendations.

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

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

3 (f) The Board may publish or contract to publish annotations and indices of
4 its decision, the decisions of the Environmental Division and the Supreme
5 Court, and the text of those decisions. The published product shall be
6 available at a reasonable rate to the general public and at a reduced rate to
7 libraries and governmental bodies within the State.

8 (g) The ~~Natural Resources~~ Board shall manage the process by which land
9 use permits are issued under section 6086 of this title, may initiate
10 enforcement on related matters, under the provisions of chapters 201 and 211
11 of this title, and may ~~petition the Environmental Division~~ initiate and hear
12 petitions for revocation of land use permits issued under this chapter. Grounds
13 for revocation are:

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

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

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

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

20 (5) failure to pay a penalty or other sums owed pursuant to, or other
21 ~~failure to comply with, court order, stipulation agreement, schedule of~~

1 ~~compliance, or other order issued under Vermont statutes and related to the~~
2 permit; or

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

6 (h) The Natural Resources Board may hear appeals of fee refund requests
7 under section 6083a of this title and appeals decisions made by District
8 Commissions or district coordinators.

9 (i) The Chair, subject to the direction of the Board, shall have general
10 charge of the offices and employees of the Board and the offices and
11 employees of the District Commissions.

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

15 * * *

16 Sec. 4. 10 V.S.A. § 6028 is amended to read:

17 § 6028. COMPENSATION

18 Members of the Board and District Commissions shall receive per diem pay
19 of \$100.00 and all necessary and actual expenses ~~in accordance with 32 V.S.A.~~

20 ~~§ 1010.~~

1 ~~Sec. 5-10 V.S.A. § 6084 is amended to read:~~

2 § 6084. NOTICE OF APPLICATION; ~~PREAPPLICATION PROCESS;~~

3 HEARINGS; COMMENCEMENT OF REVIEW

4 (a) The plans for the construction of any development or subdivision
5 subject to the permitting requirements of this chapter must be submitted by the
6 applicant to the District Commission, municipal and regional planning
7 commissions, affected State agencies, and adjoining landowners not less than
8 30 days prior to filing an application under this chapter, unless the municipal
9 and regional planning commissions and affected State agencies waive this
10 requirement.

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

14 (A) make recommendations to the applicant within 30 days; or

15 (B) once the application is filed with the District Commission, make
16 recommendations to the District Commission by the deadline established in the
17 applicable provision of this section, Board rule, or scheduling order issued by
18 the District Commission.

19 (2) The application shall address the substantive written comments and
20 recommendations made by the planning commissions related to the criteria of
21 subsection 6086(a) of this title received by the applicant and the substantive

1 ~~eral comments related to these criteria made at a public hearing under~~
2 subdivision (1) of this subsection.

3 (a) This subsection shall not apply to a project that has been designated
4 as using simplified procedures pursuant to subdivision 6025(b)(1) of this title
5 or an administrative amendment.

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

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

5 * * *

6 ~~(e)(d)~~ Anyone required to receive notice of commencement of minor
7 application review pursuant to subsection ~~(b)(c)~~ of this section may request a
8 hearing by filing a request within the public comment period specified in the
9 notice pursuant to Board rules. The District Commission, on its own motion,
10 may order a hearing within 20 days of notice of commencement of minor
11 application review.

12 ~~(d)(e)~~ Any hearing or prehearing conference for a major application shall
13 be held within 40 days of receipt of a complete application, or within 20 days
14 of the end of the public comment period specified in the notice of minor
15 application review if the District Commission determines that it is appropriate
16 to hold a hearing for a minor.

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

1 * * *

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

6 * * *

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

10 * * *

11 Sec. 6. 10 V.S.A. § 6089 is amended to read:

12 § 6089. APPEALS

13 ~~Appeals of any act or decision of a District Commission under this chapter~~
14 ~~or a district coordinator under subsection 6007(e) of this title shall be made to~~
15 ~~the Environmental Division in accordance with chapter 220 of this title. For~~
16 ~~the purpose of this section, a decision of the Chair of a District Commission~~
17 ~~under section 6001e of this title on whether action has been taken to~~
18 ~~circumvent the requirements of this chapter shall be considered an act or~~
19 ~~decision of the District Commission.~~

20 (a)(1) An appeal from the District Commission shall be to the Board and
21 shall be accompanied by a fee prescribed by section 6083a of this title.

1 ~~(2) Participation before District Commission. An aggrieved person~~
2 ~~shall not appeal an act or decision that was made by a District Commission~~
3 ~~unless the person was granted party status by the District Commission pursuant~~
4 ~~to subdivision 6085(c)(1)(E) of this title, participated in the proceedings before~~
5 ~~the District Commission, and retained party status at the end of the District~~
6 ~~Commission proceedings. In addition, the person may only appeal those issues~~
7 ~~under the criteria with respect to which the person was granted party status.~~
8 ~~However, notwithstanding these limitations, an aggrieved person may appeal~~
9 ~~an act or decision of the District Commission if the Board determines that:~~

10 ~~(A) there was a procedural defect that prevented the person from~~
11 ~~obtaining party status or participating in the proceeding;~~

12 ~~(B) the decision being appealed is the grant or denial of party status;~~

13 ~~or~~

14 ~~(C) some other condition exists that would result in manifest injustice~~
15 ~~if the person's right to appeal was disallowed.~~

16 ~~(3) An appellant to the Board, under this section, shall file with the~~
17 ~~notice of appeal a statement of the issues to be addressed in the appeal, a~~
18 ~~summary of the evidence that will be presented, and a preliminary list of~~
19 ~~witnesses who will testify on behalf of the appellant.~~

20 ~~(4) The Board shall hold a de novo hearing on all findings requested by~~
21 ~~any party that files an appeal or cross appeal, according to the rules of the~~

1 ~~Board. The hearing shall be held in the municipality where the project subject~~
2 ~~to the appeal is located, if possible, or as close as possible.~~

3 (5) Notice of appeal shall be filed with the Board within 30 days
4 following the act or decision by the Board. The Board shall notify the parties
5 who had party status before the District Commission of the filing of any
6 appeal.

7 (6) Prehearing discovery.

8 (A) Discovery of persons who may provide testimony pursuant to
9 Vermont Rule of Evidence 702 shall be provided as set forth in the Vermont
10 Rules of Civil Procedure 26-37.

11 (B) Interrogatories may be submitted pursuant to the Vermont Rule
12 of Civil Procedure 33 but, other than with regard to testimony pursuant to
13 Vermont Rule of Evidence 702, shall be limited to discovery of the identity of
14 witnesses and a summary of each witness's testimony, except by order of the
15 Board for cause shown.

16 (C) Parties may submit requests to produce and requests to enter
17 upon land pursuant to the Vermont Rule of Civil Procedure 34.

18 (D) Depositions pursuant to Vermont Rules of Civil Procedure 30-32
19 shall only be of persons who may provide testimony pursuant to Vermont Rule
20 of Evidence 702, except by order of the Board for cause shown.

1 ~~(E) The duty to supplement prehearing discovery shall be governed~~
2 ~~by Vermont Rule of Civil Procedure 26(e) except that the duty to supplement~~
3 ~~also shall apply to all facts and opinions disclosed in depositions.~~

4 ~~(b) Prior decisions of the former Environmental Board, Water Resources~~
5 ~~Board, Waste Facilities Panel, and Environmental Division shall be given the~~
6 ~~same weight and consideration as prior decisions of the Environmental Review~~
7 ~~Board.~~

8 ~~(c) An appeal from a decision of the Board under subsection (a) of this~~
9 ~~section shall be to the Supreme Court by a party as set forth in subsection~~
10 ~~6085(c) of this title.~~

11 ~~(d) No objection that has not been raised before the Board may be~~
12 ~~considered by the Supreme Court, unless the failure or neglect to urge such~~
13 ~~objection shall be excused because of extraordinary circumstances.~~

14 ~~(e) An appeal of a decision by the Board shall be allowed pursuant to~~
15 ~~3 V.S.A. § 815, including the unreasonableness or insufficiency of the~~
16 ~~conditions attached to a permit. An appeal from the District Commission shall~~
17 ~~be allowed for any reason, except no appeal shall be allowed when an~~
18 ~~application has been granted and no preliminary hearing requested.~~

19 ~~(f) Precedent from the former Environmental Board and of the~~
20 ~~Environmental Review Board that interpret Act 250 shall be provided the same~~
21 ~~deference by the Supreme Court as precedents accorded to other executive~~

1 ~~branch agencies charged with administering their enabling act. On appeal to~~
2 the Supreme Court from the Environmental Review Board, decisions of the
3 Environmental Review Board interpreting this act also shall be accorded that
4 deference.

5 (g) Upon appeal to the Supreme Court, the Board's findings of fact shall be
6 accepted unless clearly erroneous.

7 Sec. 7. 10 V.S.A. § 6007 is amended to read:

8 § 6007. ACT 250 DISCLOSURE STATEMENT; JURISDICTIONAL
9 DETERMINATION

10 * * *

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

1 ~~in addition, the requestor who is seeking a final determination shall consult with~~
2 the district coordinator and obtain approval of a subdivision 6085(c)(1)(E) list
3 of persons who shall be notified by the district coordinator because they are
4 adjoining property owners or other persons who would be likely to be able to
5 demonstrate a particularized interest protected by this chapter that may be
6 affected by an act or decision by a District Commission.

7 (d) A person who seeks review of a jurisdictional opinion issued by a
8 district coordinator may bring an appeal to the Board of the issues addressed in
9 the opinion.

10 (1) If the opinion was served on the person when issued, the person's
11 request under this subsection shall be submitted to the Board within 30 days
12 after the opinion's issuance.

13 (2) If the opinion was not served on the person when issued, the request
14 shall be submitted to the Board:

15 (A) within 30 days from the date on which the opinion was served on
16 the requestor; or

17 (B) at any time, if the opinion is never served on the requestor.

18 (3) The Board shall give notice of the request.

19 (A) The Board shall serve the notice on all persons listed in

20 ~~subdivisions 6085(c)(1)(A)-(E) of this title and post the notice on its website.~~

1 ~~(B) If the request pertains to a jurisdictional opinion for which a final~~
2 determination was requested under subsection (c) of this section, the Board
3 shall:

4 (i) serve the notice on all persons on the approved subdivision
5 6085(c)(1)(E) list; and

6 (ii) publish at the expense of the requestor the notice in a local
7 newspaper having general circulation in the area where the land that is the
8 subject of the request is located.

9 (4) An act or decision of the Board under this subsection may be
10 appealed to the Supreme Court pursuant to chapter 220 of this title.

11 Sec. 8. 10 V.S.A. § 6083a is amended to read:

12 § 6083a. ACT 250 FEES

13 * * *

14 (i) All persons filing an appeal, cross appeal, or petition from a District
15 Commission decision or jurisdictional determination shall pay a fee of
16 \$295.00, plus publication costs.

17 * * * Appeals * * *

18 Sec. 9. 10 V.S.A. chapter 220 is amended to read:

19 CHAPTER 220. CONSOLIDATED ENVIRONMENTAL APPEALS

20 § 8501. PURPOSE

21 ~~It is the purpose of this chapter to.~~

1 ~~(1) consolidate existing appeal routes for municipal zoning and~~
2 ~~subdivision decisions and acts or decisions of the Secretary of Natural~~
3 ~~Resources, district environmental coordinators, and District Commissions,~~
4 ~~excluding enforcement actions brought pursuant to chapters 201 and 211 of~~
5 ~~this title and the adoption of rules under 3 V.S.A. chapter 25;~~

6 ~~(2) standardize the appeal periods, the parties who may appeal these acts~~
7 ~~or decisions, and the ability to stay any act or decision upon appeal, taking into~~
8 ~~account the nature of the different programs affected;~~

9 ~~(3) encourage people to get involved in the Act 250 permitting process~~
10 ~~at the initial stages of review by a District Commission by requiring~~
11 ~~participation as a prerequisite for an appeal of a District Commission decision~~
12 ~~to the Environmental Division;~~

13 ~~(4) assure ensure that clear appeal routes exist for acts and decisions of~~
14 ~~the Secretary of Natural Resources; and~~

15 ~~(5)(4) consolidate appeals of decisions related to renewable energy~~
16 ~~generation plants and telecommunications facilities with review under,~~
17 ~~respectively, 30 V.S.A. §§ 248 and 248a, with appeals and consolidation of~~
18 ~~proceedings pertaining to telecommunications facilities occurring only while~~
19 ~~30 V.S.A. § 248a remains in effect.~~

20 § 8502. DEFINITIONS

21 ~~As used in this chapter.~~

1 ~~(1) "District Commission" means a District Environmental Commission~~
2 ~~established under chapter 151 of this title. [Repealed.]~~

3 ~~(2) "District coordinator" means a district environmental coordinator~~
4 ~~attached to a District Commission established under chapter 151 of this title.~~
5 ~~[Repealed.]~~

6 (3) "Environmental Court" or "Environmental Division" means the
7 Environmental Division of the Superior Court established by 4 V.S.A. § 30.

8 (4) ~~Natural Resources~~ Environmental Review Board or "Board"
9 means the Board established under chapter 151 of this title.

10 (5) "Party by right" means the following:

11 (A) the applicant;

12 (B) the landowner, if the applicant is not the landowner;

13 (C) the municipality in which the project site is located and the
14 municipal and regional planning commissions for that municipality;

15 (D) if the project site is located on a boundary, any Vermont
16 municipality adjacent to that border and the municipal and regional planning
17 commissions for that municipality;

18 (E) the solid waste management district in which the land is located,
19 if the development or subdivision constitutes a facility pursuant to subdivision
20 6602(10) of this title;

21 ~~(F) any State agency affected by the proposed project.~~

1 ~~(6) "Person" means any individual; partnership; company; corporation;~~
2 association; joint venture; trust; municipality; the State of Vermont or any
3 agency, department, or subdivision of the State; any federal agency; or any
4 other legal or commercial entity.

5 (7) "Person aggrieved" means a person who alleges an injury to a
6 particularized interest protected by the provisions of law listed in section 8503
7 of this title, attributable to an act or decision by a ~~district coordinator, District~~
8 ~~Commission, the Secretary, or the Environmental Division~~ that can be
9 redressed by the Environmental Division or the Supreme Court.

10 (8) "Secretary" means the Secretary of Natural Resources or the
11 Secretary's duly authorized representative. As used in this chapter,
12 "Secretary" shall also mean the Commissioner of Environmental Conservation,
13 the Commissioner of Forests, Parks and Recreation, and the Commissioner of
14 Fish and Wildlife, with respect to those statutes that refer to the authority of
15 that commissioner or department.

16 § 8503. APPLICABILITY

17 (a) This chapter shall govern all appeals of an act or decision of the
18 Secretary, excluding enforcement actions under chapters 201 and 211 of this
19 title and rulemaking, under the following authorities and under the rules
20 adopted under those authorities:

21

1 ~~(b) This chapter shall govern:~~

2 ~~(1) all appeals from an act or decision of a District Commission under~~

3 ~~chapter 151 of this title, excluding appeals of application fee refund requests;~~

4 ~~(2) appeals from an act or decision of a district coordinator under~~

5 ~~subsection 6007(e) of this title;~~

6 ~~(3) appeals from findings of fact and conclusions of law issued by the~~

7 ~~Natural Resources Board in its review of a designated growth center for~~

8 ~~conformance with the criteria of subsection 6086(a) of this title, pursuant to~~

9 ~~authority granted at 24 V.S.A. § 2793e(f). [Repealed.]~~

10 ~~(c) This chapter shall govern all appeals arising under 24 V.S.A.~~

11 ~~chapter 117, the planning and zoning chapter.~~

12 ~~(d) This chapter shall govern all appeals from an act or decision of the~~

13 ~~Environmental Division under this chapter.~~

14 ~~(e) This chapter shall not govern appeals from rule making decisions by the~~

15 ~~Natural Resources Environmental Review Board under chapter 151 of this title~~

16 ~~or enforcement actions under chapters 201 and 211 of this title.~~

17 ~~(f) This chapter shall govern all appeals of acts or decisions of the~~

18 ~~legislative body of a municipality arising under 24 V.S.A. chapter 61,~~

19 ~~subchapter 10, relating to the municipal certificate of approved location for~~

20 ~~salvage yards.~~

1 ~~(c) This chapter shall govern all appeals of an act or decision of the~~
2 Secretary of Natural Resources that a solid waste implementation plan for a
3 municipality proposed under 24 V.S.A. § 2202a conforms with the State Solid
4 Waste Implementation Plan adopted pursuant to section 6604 of this title.

5 § 8504. APPEALS TO THE ENVIRONMENTAL DIVISION

6 (a) ~~Act 250 and~~ Agency appeals. Within 30 days of the date of following
7 the act or decision, any person aggrieved by an act or decision of the
8 Secretary, ~~a District Commission, or a district coordinator~~ under the provisions
9 of law listed in section 8503 of this title, or any party by right, may appeal to
10 the Environmental Division, except for an act or decision of the Secretary
11 under subdivision 6086b(3)(E) of this title or governed by section 8506 of this
12 title.

13 * * *

14 (c) Notice of the filing of an appeal.

15 (1) ~~Upon filing an appeal from an act or decision of the District~~
16 ~~Commission, the appellant shall notify all parties who had party status as of~~
17 ~~the end of the District Commission proceeding, all friends of the Commission,~~
18 ~~and the Natural Resources Board that an appeal is being filed. In addition, the~~
19 ~~appellant shall publish notice not more than 10 days after providing notice as~~
20 ~~required under this subsection, at the appellant's expense, in a newspaper or~~

~~general circulation in the area of the project that is the subject of the decision.~~

~~[Repealed.]~~

~~* * *~~

~~(d) Requirement to participate before the District Commission or the Secretary.~~

~~(1) Participation before District Commission. An aggrieved person shall not appeal an act or decision that was made by a District Commission unless the person was granted party status by the District Commission pursuant to subdivision 6085(c)(1)(E) of this title, participated in the proceedings before the District Commission, and retained party status at the end of the District Commission proceedings. In addition, the person may only appeal those issues under the criteria with respect to which the person was granted party status. However, notwithstanding these limitations, an aggrieved person may appeal an act or decision of the District Commission if the Environmental judge determines that:~~

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

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

~~or~~

~~(C) some other condition exists that would result in manifest injustice if the person's right to appeal was disallowed. [Repealed.]~~

1 ~~(2) Participation before the Secretary.~~

2 * * *

3 ~~(e) Meet 250 jurisdictional determinations by a district coordinator.~~

4 ~~(1) The appellant shall provide notice of the filing of an appeal to each~~
5 ~~person entitled to notice under subdivisions 6085(c)(1)(A) through (D) of this~~
6 ~~title, to each person on an approved subdivision 6085(c)(1)(E) list, and to the~~
7 ~~Natural Resources Board.~~

8 ~~(2) Failure to appeal within the time required under subsection (a) of~~
9 ~~this section shall render the decision of the district coordinator under~~
10 ~~subsection 6007(c) of this title the final determination regarding jurisdiction~~
11 ~~under chapter 151 of this title unless the underlying jurisdictional opinion was~~
12 ~~not properly served on persons listed in subdivisions 6085(c)(1)(A) through~~
13 ~~(D) of this title and on persons on a subdivision 6085(c)(1)(E) list approved~~
14 ~~under subsection 6007(c) of this title. [Repealed.]~~

15 * * *

16 ~~(g) Consolidated appeals. The Environmental Division may consolidate or~~
17 ~~coordinate different appeals where those appeals all relate to the same project.~~

18 * * *

19 ~~(i) Deference to Agency technical determinations. In the adjudication of~~
20 ~~appeals relating to land use permits under chapter 151 of this title, technical~~
21 ~~determinations of the Secretary shall be accorded the same deference as they~~

1 ~~are recorded by a District Commission under subsection 6086(d) of this title.~~

2 ~~[Repealed.]~~

3 * * *

4 (k) Limitations on appeals. Notwithstanding any other provision of this
5 section:

6 (1) ~~there shall be no appeal from a District Commission decision when~~
7 ~~the Commission has issued a permit and no hearing was requested or held, or~~
8 ~~no motion to alter was filed following the issuance of an administrative~~
9 ~~amendment;~~

10 (2) a municipal decision regarding whether a particular application
11 qualifies for a recorded hearing under 24 V.S.A. § 4471(b) shall not be subject
12 to appeal;

13 (3) ~~if a District Commission issues a partial decision under subsection~~
14 ~~6086(b) of this title, any appeal of that decision must be taken within 30 days~~
15 ~~of the date of that decision.~~

16 (l) Representation. The Secretary may represent the Agency of Natural
17 Resources in all appeals under this section. ~~The Chair of the Natural~~
18 ~~Resources Board may represent the Board in any appeal under this section,~~
19 ~~unless the Board directs otherwise. If more than one State agency, other than~~
20 ~~the Board, either appeals or seeks to intervene in an appeal under this section,~~

1 ~~only the Attorney General may represent the interests of those agencies of the~~
2 State in the appeal.

3 (m) Precedent. Prior decisions of the Environmental Board, Water
4 Resources Board, and Waste Facilities Panel shall be given the same weight
5 and consideration as prior decisions of the Environmental Division.

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

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

10 (2) is a party by right;

11 (3) ~~is the Natural Resources Board, [Repealed.]~~

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

13 (5) qualifies as an "interested person," as established in 24 V.S.A.
14 § 4465, with respect to appeals under 24 V.S.A. chapter 117; or

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

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

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

3 (p) Administrative record. The Secretary shall certify the administrative
4 record as defined in chapter 170 of this title and shall transfer a certified copy
5 of that record to the Environmental Division when:

6 (1) there is an appeal of an act or decision of the Secretary that is based
7 on that record; or

8 (2) ~~there is an appeal of a decision of a District Commission, and the~~
9 ~~applicant used a decision of the Secretary based on that record to create a~~
10 ~~presumption under a criterion of subsection 6086(a) of this title that is at issue~~
11 ~~in the appeal.~~

12 § 8505. APPEALS TO THE SUPREME COURT

13 (a) Any person aggrieved by a decision of the Environmental Division
14 pursuant to this subchapter, any party by right, or any person aggrieved by a
15 decision of the Environmental Review Board may appeal to the Supreme
16 Court within 30 days of following the date of the entry of the order or
17 judgment appealed from, provided that:

18 (1) the person was a party to the proceeding before the Environmental
19 Division; or

20 (2) the decision being appealed is the denial of party status; or

21 ~~(3) the Supreme Court determines that.~~

1 ~~(A) there was a procedural defect that prevented the person from~~
2 participating in the proceeding; or

3 (B) some other condition exists that would result in manifest injustice
4 if the person's right to appeal were disallowed.

5 * * *

6 * * * Environmental Division * * *

7 Sec. 10. 4 V.S.A. § 34 is amended to read:

8 § 34. JURISDICTION; ENVIRONMENTAL DIVISION

9 The Environmental Division shall have:

10 (1) jurisdiction of matters arising under 10 V.S.A. chapters 201 and 220;

11 and

12 (2) jurisdiction of matters arising under 24 V.S.A. chapter 61,

13 subchapter 12 and 24 V.S.A. chapter 117; ~~and~~

14 ~~(3) original jurisdiction to revoke permits under 10 V.S.A. chapter 151.~~

15 * * * Judicial Nominating Board * * *

16 Sec. 11. 4 V.S.A. § 601 is amended to read:

17 § 601. JUDICIAL NOMINATING BOARD CREATED; COMPOSITION

18 (a) The Judicial Nominating Board is created for the nomination of
19 Supreme Court Justices, Superior judges, magistrates, the Chair and members
20 of the Environmental Review Board, and the Chair and members of the Public
21 Utility Commission.

1 * * *

2 (d) The Judicial Nominating Board shall adopt rules under 3 V.S.A.
3 chapter 25 which that shall establish criteria and standards for the nomination
4 of candidates for Justices of the Supreme Court, Superior judges, magistrates,
5 the Chair and members of the Environmental Review Board, and the Chair and
6 members of the Public Utility Commission based on the attributes identified in
7 subsection 602(d) of this title. The application form shall not be included in
8 the rules and may be developed and periodically revised at the discretion of the
9 Board.

10 * * *

11 Sec. 12. 4 V.S.A. § 602b is added to read

12 § 602b. DUTIES; ENVIRONMENTAL REVIEW BOARD MEMBERS

13 (a) In accordance with 10 V.S.A. § 6021, whenever a vacancy occurs for a
14 member position on the Environmental Review Board, the Governor shall
15 submit at least five names of potential nominees to the Judicial Nominating
16 Board for review. The Judicial Nominating Board shall submit to the
17 Governor the names of candidates it deems well qualified. The Judicial
18 Nominating Board shall submit to the Governor a summary of the
19 qualifications and experience of each candidate whose name is submitted to
20 the Governor, together with any further information relevant to the matter.

1 ~~(b) A candidate for the position of member of the Environmental Review~~
2 ~~Board shall not be required to be an attorney; however, if the candidate is~~
3 ~~admitted to practice law in Vermont, the Judicial Nominating Board shall~~
4 ~~submit the candidate's name to the Court Administrator, who shall disclose to~~
5 ~~the Board information solely about professional disciplinary action taken or~~
6 ~~pending concerning the candidate. If a candidate is not admitted to practice~~
7 ~~law in Vermont but practices a profession requiring licensure, certification, or~~
8 ~~other professional regulation by the State, the Judicial Nominating Board shall~~
9 ~~submit the candidate's name to the State professional regulatory entity, and~~
10 ~~that entity shall disclose to the Board any professional disciplinary action taken~~
11 ~~or pending concerning the candidate.~~

12 (c) A candidate shall possess the following attributes:

13 (1) Integrity. A candidate shall possess a record and reputation for
14 excellent character and integrity.

15 (2) Impartiality. A candidate shall exhibit an ability to make judicial
16 determinations in a manner free of bias.

17 (3) Work ethic. A candidate shall demonstrate diligence.

18 (4) Availability. A candidate shall have adequate time to dedicate to the
19 position.

20 (d) The Board shall not contain two members who reside in the same
21 county.

1 ~~(e) Candidates shall be sought who have experience, expertise, or skills~~
2 relating to one or more of the following areas: environmental science, natural
3 resources law and policy, land use planning, community planning, or
4 environmental justice.

5 Sec. 13. 4 V.S.A. § 603 is amended to read:

6 § 603. APPOINTMENT OF JUSTICES, JUDGES, MAGISTRATES;

7 PUBLIC UTILITY COMMISSION CHAIR, AND MEMBERS;

8 ENVIRONMENTAL REVIEW BOARD CHAIR AND MEMBERS

9 Whenever the Governor appoints a Supreme Court Justice, a Superior
10 Judge, a magistrate, the Chair or a member of the Public Utility Commission,
11 ~~or a member of the Public Utility Commission~~ the Chair or a member of the
12 Environmental Review Board, he or she the Governor shall select from the list
13 of names of qualified persons submitted by the Judicial Nominating Board
14 pursuant to law. The names of candidates submitted and not selected shall
15 remain confidential.

16 * * * Report; Transition; Revision Authority Effective Dates * * *

17 Sec. 14. ENVIRONMENTAL REVIEW BOARD POSITIONS:

18 APPROPRIATION

19 (a) The following new positions are created at the Environmental Review
20 Board for the purposes of carrying out this act:

21 ~~(1) one Staff Attorney 1, and~~

1 ~~(2) four half-time Environmental Review Board members~~

2 ~~(b) The sum of \$300,000.00 is appropriated to the Environmental Review~~
3 ~~Board from the General Fund in fiscal year 2023 for the positions established~~
4 ~~in subsection (a) of this section and for additional operating costs required to~~
5 ~~implement the appeals process established in this act.~~

6 Sec. 15. NATURAL RESOURCES BOARD TRANSITION

7 ~~(a) The Governor shall appoint the members of Environmental Review~~
8 ~~Board on or before January 1, 2023, and the terms of any Natural Resources~~
9 ~~Board member not appointed consistent with the requirements of 10 V.S.A.~~
10 ~~§ 6021(a)(1)(A) or (B) shall expire on that day.~~

11 ~~(b) The Environmental Review Board shall adopt rules of procedure for its~~
12 ~~hearing process pursuant to 10 V.S.A. § 6025(a) on or before July 1, 2023.~~

13 Sec. 16. REPORT; ENVIRONMENTAL REVIEW BOARD

14 ~~On or before December 31, 2023, the Chair of the Environmental Review~~
15 ~~Board shall report to the House Committee on Natural Resources, Fish, and~~
16 ~~Wildlife and the Senate Committee on Natural Resources and Energy on~~
17 ~~necessary updates to the Act 250 program, including how to transition to~~
18 ~~location-based jurisdiction in order to protect natural resources of statewide~~
19 ~~significance, including biodiversity, and to encourage development in~~
20 ~~appropriate locations, the effectiveness of the current permit fee structure, and~~

1 ~~whether or not there needs to be a limit on the number of pages of an~~
2 ~~application.~~

3 Sec. 17. ENVIRONMENTAL DIVISION; CONTINUED JURISDICTION

4 Notwithstanding the repeal of its jurisdictional authority to hear appeals
5 relative to land use permits under Sec. 9 of this act, the Environmental
6 Division shall continue to have jurisdiction to complete its consideration of
7 any such appeal that is pending before it as of July 1, 2023 if, with respect to
8 such act or appeal, mediation or discovery has commenced, a dispositive
9 motion has been filed, or a trial has begun.

10 Sec. 18. REVISION AUTHORITY

11 In preparing the Vermont Statutes Annotated for publication in 2022, the
12 Office of Legislative Counsel shall replace all references to the “Natural
13 Resources Board” with the “Environmental Review Board” in Title 3, Title 10,
14 Title 24, Title 29, Title 30, and Title 32.

15 * * * Effective Dates * * *

16 Sec. 19. EFFECTIVE DATES

17 This act shall take effect on July 1, 2022, except that the authority to make
18 appointments to the Environmental Review Board shall take effect on passage.

** * * Natural Resources Board * * **

Sec. 1. PURPOSE

The purpose of this act is to strengthen the administration of the Act 250 program by changing the structure, function, and name of the Natural Resources Board. This act requires that appeals of Act 250 permit decisions be heard by a five-member board called the Environmental Review Board. The Environmental Division of the Superior Court would continue to hear the other types of cases within its jurisdiction. The Environmental Review Board would keep the current duties of the Natural Resources Board in addition to hearing appeals. This change would allow the Act 250 program to return to how it was originally envisioned when enacted by being a citizen-friendly process. The Board would provide oversight, management, and training to the Act 250 program staff and District Commissions and develop Act 250 program policy through permit decisions and rulemaking.

Sec. 2. 10 V.S.A. § 6021 is amended to read:

§ 6021. BOARD; VACANCY; REMOVAL

(a) A ~~Natural Resources~~ Board established. The Environmental Review Board is created to administer the Act 250 program and hear appeals.

(1) The Board shall consist of five members appointed by the Governor, after review and approval by the Environmental Review Board Nominating Committee in accordance with subdivision (2) of this section and confirmed with the advice and consent of the Senate, so that one appointment expires in each year. The Chair shall be a full-time position, and the other four members

~~shall be half-time positions. In making these appointments, the Governor and the Senate shall give consideration to candidates who have experience, expertise, or skills relating to the environment or land use one or more of the following areas: environmental science, natural resources law and policy, land use planning, community planning, or environmental justice.~~

~~(A) The Governor shall appoint a chair of the Board, a position that shall be a full-time position. The Governor shall ensure Board membership shall reflect, to the extent possible, the racial, ethnic, gender, and geographic diversity of the State. The Board shall not contain two members who reside in the same county.~~

~~(B) Following initial appointments, the members, except for the Chair, shall be appointed for terms of four five years. All terms shall begin on July 1 and expire on June 30. A member may continue serving until a successor is appointed. The initial appointments shall be for staggered terms.~~

~~(2) The Governor shall appoint up to five persons, with preference given to former Environmental Board, Natural Resources Board, or District Commission members, with the advice and consent of the Senate, to serve as alternates for Board members.~~

~~(A) Alternates shall be appointed for terms of four years, with initial appointments being staggered. The Environmental Review Board Nominating~~

Committee shall advertise the position when a vacancy will occur on the Environmental Review Board.

~~(B) The Chair of the Board may assign alternates to sit on specific matters before the Board in situations where fewer than five members are available to serve~~ The Nominating Committee shall review the applicants to determine which are well-qualified for appointment to the Board and shall recommend those candidates to the Governor. The names of candidates shall be confidential.

~~(C) The Governor shall appoint, with the advice and consent of the Senate, a chair and four members of the Board from the list of well-qualified candidates sent to the Governor by the Committee.~~

~~(b) Any vacancy occurring in the membership of the Board shall be filled by the Governor for the unexpired portion of the term~~ Terms; vacancy; succession. The term of each appointment subsequent to the initial appointments described in subsection (a) of this section shall be five years. Any appointment to fill a vacancy shall be for the unexpired portion of the term vacated. A member may seek reappointment by informing the Governor. If the Governor decides not to reappoint the member, the Nominating Committee shall advertise the vacancy.

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

pleasure of the Governor by the remaining members of the Board in accordance with the Vermont Administrative Procedures Act. The Board shall adopt rules pursuant to 3 V.S.A. chapter 25 to define the basis and process for removal.

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

(e) Retirement from office. When a Board member who hears all or a substantial part of a case retires from office before the case is completed, the member may remain a member of the Board, at the member's discretion, for the purpose of concluding and deciding that case and signing the findings and judgments involved. A retiring Chair shall also remain a member for the purpose of certifying questions of law if a party appeals to the Supreme Court. For the service, the member shall receive a reasonable compensation to be fixed by the remaining members of the Board and necessary expenses while on official business.

Sec. 3. 10 V.S.A. § 6032 is added to read:

§ 6032. ENVIRONMENTAL REVIEW BOARD NOMINATING

COMMITTEE

(a) Creation. The Environmental Review Board Nominating Committee is created for the purpose of assessing the qualifications of applicants for appointment to the Environmental Review Board in accordance with section 6021 of this title.

(b) Members. The Committee shall consist of seven members who shall be appointed as follows:

(1) The Governor shall appoint three members from the Executive Branch, with at least one being an employee of the Department of Human Resources.

(2) The Speaker of the House of Representatives shall appoint two members from the House of Representatives.

(3) The Senate Committee on Committees shall appoint two members from the Senate.

(c) Terms. The members of the Committee shall serve for terms of two years. Members shall serve until their successors are appointed. Members shall serve not more than three consecutive terms in any capacity. A legislative member who is appointed as a member of the Committee shall retain the position for the term appointed to the Committee even if the member is subsequently not reelected to the General Assembly during the member's term on the Committee.

(d) Chair. The members shall elect their own chair.

(e) Quorum. A quorum of the Committee shall consist of four members.

(f) Staff and services. The Committee is authorized to use the staff and services of appropriate State agencies and departments as necessary to conduct investigations of applicants.

(g) Confidentiality. Except as provided in subsection (h) of this section, proceedings of the Committee, including the names of candidates considered by the Committee and information about any candidate submitted to the Governor, shall be confidential. The provisions of 1 V.S.A. § 317(e) (expiration of Public Records Act exemptions) shall not apply to the exemptions or confidentiality provisions in this subsection.

(h) Public information. The following shall be public:

(1) operating procedures of the Committee;

(2) standard application forms and any other forms used by the Committee, provided they do not contain personal information about a candidate or confidential proceedings;

(3) all proceedings of the Committee prior to the receipt of the first candidate's completed application; and

(4) at the time the Committee sends the names of the candidates to the Governor, the total number of applicants for the vacancies and the total number of candidates sent to the Governor.

(i) Reimbursement. Legislative members of the Committee shall be entitled to per diem compensation and reimbursement for expenses in accordance with 2 V.S.A. § 23. Compensation and reimbursement shall be paid from the legislative appropriation.

(j) Duties.

(1) When a vacancy occurs, the Committee shall review applicants to determine which are well-qualified for the Board and submit those names to the Governor. The Committee shall submit to the Governor a summary of the qualifications and experience of each candidate whose name is submitted to the Governor, together with any further information relevant to the matter.

(2) An applicant for the position of member of the Environmental Review Board shall not be required to be an attorney. If the candidate is admitted to practice law in Vermont or practices a profession requiring licensure, certification, or other professional regulation by the State, the Committee shall submit the candidate's name to the Court Administrator or the applicable State professional regulatory entity, and that entity shall disclose to the Committee any professional disciplinary action taken or pending concerning the candidate.

(3) Candidates shall be sought who have experience, expertise, or skills relating to one or more of the following areas: environmental science, natural

resources law and policy, land use planning, community planning, or environmental justice.

(4) The Committee shall ensure a candidate possesses the following attributes:

(A) Integrity. A candidate shall possess a record and reputation for excellent character and integrity.

(B) Impartiality. A candidate shall exhibit an ability to make judicial determinations in a manner free of bias.

(C) Work ethic. A candidate shall demonstrate diligence.

(D) Availability. A candidate shall have adequate time to dedicate to the position.

Sec. 4. 10 V.S.A. § 6025 is amended to read:

§ 6025. RULES

(a) The Board may adopt rules of procedure for itself and the District Commissions. The Board shall adopt rules of procedure that govern appeals and other contested cases before it that are consistent with this chapter.

* * *

Sec. 5. 10 V.S.A. § 6027 is amended to read:

§ 6027. POWERS

(a) The Board and District Commissions each shall have supervisory authority in environmental matters respecting projects within their jurisdiction

and shall apply their independent judgment in determining facts and interpreting law. Each shall have the power, with respect to any matter within its jurisdiction, to:

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

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

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

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

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

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

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

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

(f) The Board shall publish its decisions online. The Board may publish online or contract to publish annotations and indices of its decisions, the decisions of the Environmental Division of the Superior Court and the Supreme Court, and the text of those decisions. The published product shall be available at a reasonable rate to the general public and at a reduced rate to libraries and governmental bodies within the State.

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

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

- (2) *noncompliance with any permit or permit condition;*
- (3) *failure to disclose all relevant and material facts in the application or during the permitting process;*
- (4) *misrepresentation of any relevant and material fact at any time;*
- (5) *failure to pay a penalty or other sums owed pursuant to, or other failure to comply with, court order, stipulation agreement, schedule of compliance, or other order issued under Vermont statutes and related to the permit; or*
- (6) *failure to provide certification of construction costs, as required under subsection 6083a(a) of this title, or failure to pay supplemental fees as required under that section.*
- (h) *The Natural Resources Board may hear appeals of fee refund requests under section 6083a of this title. The Board shall hear appeals of decisions made by District Commissions and district coordinators.*
- (i) *The Chair, subject to the direction of the Board, shall have general charge of the offices and employees of the Board and the offices and employees of the District Commissions.*
- (j) *The Natural Resources Board may participate as a party in all matters before the Environmental Division that relate to land use permits issued under this chapter. [Repealed.]*

* * *

~~Sec. 6. 10 V.S.A. § 6028 is amended to read:~~

~~§ 6028. COMPENSATION~~

~~Members of the Board and District Commissions shall receive per diem pay of \$100.00 and all necessary and actual expenses in accordance with 32 V.S.A. § 1010. Per diem pay shall be available for time spent reviewing permit applications and for time spent making decisions on permit applications. Per diem requests shall be approved or denied by the Executive Director.~~

~~Sec. 76. 10 V.S.A. § 6022 is amended to read:~~

~~§ 6022. PERSONNEL~~

~~(a) Regular personnel. The Board may appoint legal counsel, scientists, engineers, experts, investigators, temporary employees, and administrative personnel as it finds necessary in carrying out its duties, unless the Governor shall otherwise provide in providing personnel to assist the District Commissions and in investigating matters within its jurisdiction.~~

~~(b) Personnel for particular proceedings~~

~~(1) Retention.~~

~~(A) The Board may authorize or retain legal counsel, official stenographers, expert witnesses, advisors, temporary employees, and other research services:~~

~~(i) to assist the Board in any proceeding before it under this~~

~~chapter, and~~

~~(ii) to monitor compliance with any formal opinion of the Board or a District Commission.~~

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

~~(2) Assessment of costs.~~

~~(A) The Board may allocate to an applicant the portion of its expenses incurred by retaining additional personnel for a proceeding. On petition of an applicant to which costs are proposed to be allocated, the Board shall review and determine, after opportunity for hearing, the necessity and reasonableness of those costs, having due regard for the size and complexity of the project, and may amend or revise an allocation.~~

~~(B) Prior to allocating costs, the Board shall make a determination of the purpose and use of the funds to be raised under this section, identify the recipient of the funds, provide for allocation of costs among applicants to be assessed, indicate an estimated duration of the proceedings, and estimate the total costs to be imposed. With the approval of the Board, estimates may be revised as necessary. From time to time during the progress of the work, the Board shall render to the applicant detailed statements showing the amount of money expended or contracted for in the work of additional personnel, which~~

~~statements shall be paid into the State Treasury at the time and in the manner
as the Board may reasonably direct.~~

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

~~(b) Executive Director. The Board shall appoint an Executive Director.
The Director shall be a full-time State employee, shall be exempt from the
State classified system, and shall serve at the pleasure of the Board. The
Director shall be responsible for:~~

~~(1) supervising and administering the operation and implementation of
this chapter and the rules adopted by the Board as directed by the Board;~~

~~(2) assisting the Board in its duties and administering the requirements
of this chapter;~~

~~(3) employing such staff as may be required to carry out the functions of
the Board; and~~

~~(4) preparing an annual budget for submission to the Board.~~

Sec. 87. 10 V.S.A. § 6084 is amended to read:

§ 6084. NOTICE OF APPLICATION; HEARINGS; COMMENCEMENT OF
REVIEW

~~(a) On or before the date of~~ Upon the filing of an application with the
District Commission, the applicant District Commission shall send, by
electronic means, notice and a copy of the initial application to the owner of

the land if the applicant is not the owner; the municipality in which the land is located; the municipal and regional planning commissions for the municipality in which the land is located; the Vermont Agency of Natural Resources; and any adjacent Vermont municipality and municipal and regional planning commission if the land is located on a municipal or regional boundary. The applicant shall furnish to the District Commission the names of those furnished notice by affidavit, and shall ~~post~~ send by electronic means a copy of the notice ~~in~~ to the town clerk's office of the town or towns in which the project lies. The town clerk shall post the notice in the town office. The applicant shall also provide a list of adjoining landowners to the District Commission. Upon request and for good cause, the District Commission may authorize the applicant to provide a partial list of adjoining landowners in accordance with Board rules.

* * *

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

* * *

Sec. 8. 10 V.S.A. § 6089 is amended to read:

§ 6089. APPEALS

~~Appeals of any act or decision of a District Commission under this chapter or a district coordinator under subsection 6007(c) of this title shall be made to the Environmental Division in accordance with chapter 220 of this title. For the purpose of this section, a decision of the Chair of a District Commission under section 6001e of this title on whether action has been taken to circumvent the requirements of this chapter shall be considered an act or decision of the District Commission.~~

(a)(1) An appeal of any act or decision of a District Commission shall be to the Board and shall be accompanied by a fee prescribed by section 6083a of this title.

(2) Participation before District Commission. A person shall not appeal an act or decision that was made by a District Commission unless the person was granted party status by the District Commission pursuant to subdivision 6085(c)(1)(E) of this title, participated in the proceedings before the District Commission, and retained party status at the end of the District Commission proceedings. In addition, the person may only appeal those issues under the criteria with respect to which the person was granted party status. However, notwithstanding these limitations, a person may appeal an act or decision of the District Commission if the Board determines that:

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

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

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

(3) An appellant to the Board, under this section, shall file with the notice of appeal a statement of the issues to be addressed in the appeal, a summary of the evidence that will be presented, and a preliminary list of witnesses who will testify on behalf of the appellant.

(4) The Board shall hold a de novo hearing on all findings requested by any party that files an appeal or cross appeal, according to the rules of the Board. The hearing shall be held in the municipality where the project subject to the appeal is located, if possible, or as close as possible.

(5) Notice of appeal shall be filed with the Board within 30 days following the act or decision by the District Commission. The Board shall notify the parties who had party status before the District Commission of the filing of any appeal.

(6) Prehearing discovery.

(A) A party may obtain discovery of expert witnesses who may provide testimony relevant to the appeal. Expert witness prefiled testimony

shall be in accordance with the Vermont Rules of Evidence. The use of discovery for experts shall comply with the requirements in the Vermont Rules of Civil Procedure 26–37.

(B) Interrogatories served on nonexpert witnesses shall be limited to discovery of the identity of witnesses and a summary of each witness' testimony, except by order of the Board for cause shown. Interrogatories served on expert witnesses shall be in accordance with the Vermont Rules of Civil Procedure.

(C) Parties may submit requests to produce and requests to enter upon land pursuant to the Vermont Rule of Civil Procedure 34.

(D) Parties may not take depositions of witnesses, except by order of the Board for cause shown.

(E) The Board may require a party to supplement, as necessary, any prehearing testimony that is provided.

(b) Prior decisions of the former Environmental Board, Water Resources Board, Waste Facilities Panel, and Environmental Division of the Superior Court shall be given the same weight and consideration as prior decisions of the Environmental Review Board.

(c) An appeal from a decision of the Board under subsection (a) of this section shall be to the Supreme Court by a party as set forth in subsection 6085(c) of this title.

(d) No objection that has not been raised before the Board may be considered by the Supreme Court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances.

(e) An appeal of a decision by the Board shall be allowed pursuant to 3 V.S.A. § 815, including the unreasonableness or insufficiency of the conditions attached to a permit. An appeal from the District Commission shall be allowed for any reason, except no appeal shall be allowed when an application has been granted and no hearing was requested.

(f) Precedent from the former Environmental Board and of the Environmental Review Board that interpret Act 250 shall be provided the same deference by the Supreme Court as precedents accorded to other Executive Branch agencies charged with administering their enabling act. On appeal to the Supreme Court from the Environmental Review Board, decisions of the Environmental Review Board interpreting this act also shall be accorded that deference.

(g) Upon appeal to the Supreme Court, the Board's findings of fact shall be accepted unless clearly erroneous.

(h) Completion of case. A case shall be deemed completed when the Board enters a final decision even though that decision is appealed to the Supreme Court and remanded by that Court.

(i) Court of record; jurisdiction. The Board shall have the powers of a court of record in the determination and adjudication of all matters within its jurisdiction. It may initiate proceedings on any matter within its jurisdiction. It may render judgments and enforce the same by any suitable process issuable by courts in this State. An order issued by the Board on any matter within its jurisdiction shall have the effect of a judicial order. The Board's jurisdiction shall include:

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

(2) the issuance of decisions on appeals pursuant to sections 6007 and 6089 of this title.

Sec. ~~109~~. 10 V.S.A. § 6007 is amended to read:

§ 6007. ACT 250 DISCLOSURE STATEMENT; JURISDICTIONAL

DETERMINATION

* * *

(c) With respect to the partition or division of land, or with respect to an activity that might or might not constitute development, any person may submit to the district coordinator an "Act 250 Disclosure Statement" and other information required by the rules of the Board and may request a jurisdictional opinion from the district coordinator concerning the applicability of this

chapter. If a requestor wishes a final determination to be rendered on the question, the district coordinator, at the expense of the requestor and in accordance with rules of the Board, shall publish notice of the issuance of the opinion in a local newspaper generally circulating in the area where the land that is the subject of the opinion is located and shall serve the opinion on all persons listed in subdivisions 6085(c)(1)(A) through (D) of this title. In addition, the requestor who is seeking a final determination shall consult with the district coordinator and obtain approval of a subdivision 6085(c)(1)(E) list of persons who shall be notified by the district coordinator because they are adjoining property owners or other persons who would be likely to be able to demonstrate a particularized interest protected by this chapter that may be affected by an act or decision by a District Commission.

(d) A person who seeks review of a jurisdictional opinion issued by a district coordinator may bring to the Board an appeal of issues addressed in the opinion.

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

(2) Failure to appeal within 30 days following the issuance of the jurisdictional opinion shall render the decision of the district coordinator under subsection (c) of this section the final determination regarding

jurisdiction unless the underlying jurisdictional opinion was not properly served on persons listed in subdivisions 6085(c)(1)(A) through (D) of this title and on persons on a subdivision 6085(c)(1)(E) list approved under subsection (c) of this section.

Sec. ~~11~~10. 10 V.S.A. § 6083a is amended to read:

§ 6083a. ACT 250 FEES

* * *

(i) All persons filing an appeal, cross appeal, or petition from a District Commission decision or jurisdictional determination shall pay a fee of \$295.00, plus publication costs.

* * * Appeals * * *

Sec. ~~11~~11. 10 V.S.A. chapter 220 is amended to read:

CHAPTER 220. CONSOLIDATED ENVIRONMENTAL APPEALS

§ 8501. PURPOSE

It is the purpose of this chapter to:

(1) consolidate existing appeal routes for municipal zoning and subdivision decisions and acts or decisions of the Secretary of Natural Resources, ~~district environmental coordinators, and District Commissions,~~ excluding enforcement actions brought pursuant to chapters 201 and 211 of this title and the adoption of rules under 3 V.S.A. chapter 25;

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

(3) ~~encourage people to get involved in the Act 250 permitting process at the initial stages of review by a District Commission by requiring participation as a prerequisite for an appeal of a District Commission decision to the Environmental Division;~~

(4) ~~assure~~ ensure that clear appeal routes exist for acts and decisions of the Secretary of Natural Resources; and

(5)(4) consolidate appeals of decisions related to renewable energy generation plants and telecommunications facilities with review under, respectively, 30 V.S.A. §§ 248 and 248a, with appeals and consolidation of proceedings pertaining to telecommunications facilities occurring only while 30 V.S.A. § 248a remains in effect.

§ 8502. DEFINITIONS

As used in this chapter:

(1) “District Commission” means a District Environmental Commission established under chapter 151 of this title. [Repealed.]

(2) “District coordinator” means a district environmental coordinator attached to a District Commission established under chapter 151 of this title. [Repealed.]

(3) *“Environmental Court” or “Environmental Division” means the Environmental Division of the Superior Court established by 4 V.S.A. § 30.*

(4) *“~~Natural Resources~~ Environmental Review Board” or “Board” means the Board established under chapter 151 of this title.*

(5) *“Party by right” means the following:*

(A) the applicant;

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

(C) the municipality in which the project site is located and the municipal and regional planning commissions for that municipality;

(D) if the project site is located on a boundary, any Vermont municipality adjacent to that border and the municipal and regional planning commissions for that municipality;

(E) the solid waste management district in which the land is located, if the development or subdivision constitutes a facility pursuant to subdivision 6602(10) of this title;

(F) any State agency affected by the proposed project.

(6) *“Person” means any individual; partnership; company; corporation; association; joint venture; trust; municipality; the State of Vermont or any agency, department, or subdivision of the State; any federal agency; or any other legal or commercial entity.*

(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.*

(8) *“Secretary” means the Secretary of Natural Resources or the Secretary’s duly authorized representative. As used in this chapter, “Secretary” shall also mean the Commissioner of Environmental Conservation, the Commissioner of Forests, Parks and Recreation, and the Commissioner of Fish and Wildlife, with respect to those statutes that refer to the authority of that commissioner or department.*

§ 8503. APPLICABILITY

(a) *This chapter shall govern all appeals of an act or decision of the Secretary, excluding enforcement actions under chapters 201 and 211 of this title and rulemaking, under the following authorities and under the rules adopted under those authorities:*

** * **

(b) *This chapter shall govern:*

(1) all appeals from an act or decision of a District Commission under chapter 151 of this title, excluding appeals of application fee refund requests;

~~(2) appeals from an act or decision of a district coordinator under subsection 6007(e) of this title;~~

~~(3) appeals from findings of fact and conclusions of law issued by the Natural Resources Board in its review of a designated growth center for conformance with the criteria of subsection 6086(a) of this title, pursuant to authority granted at 24 V.S.A. § 2793e(f). [Repealed.]~~

~~(c) This chapter shall govern all appeals arising under 24 V.S.A. chapter 117, the planning and zoning chapter.~~

~~(d) This chapter shall govern all appeals from an act or decision of the Environmental Division under this chapter.~~

~~(e) This chapter shall not govern appeals from rulemaking decisions by the Natural Resources Environmental Review Board under chapter 151 of this title or enforcement actions under chapters 201 and 211 of this title.~~

~~(f) This chapter shall govern all appeals of acts or decisions of the legislative body of a municipality arising under 24 V.S.A. chapter 61, subchapter 10, relating to the municipal certificate of approved location for salvage yards.~~

~~(g) This chapter shall govern all appeals of an act or decision of the Secretary of Natural Resources that a solid waste implementation plan for a municipality proposed under 24 V.S.A. § 2202a conforms with the State Solid Waste Implementation Plan adopted pursuant to section 6604 of this title.~~

§ 8504. APPEALS TO THE ENVIRONMENTAL DIVISION

(a) ~~Act 250 and~~ Agency appeals. Within 30 days of the date of following the act or decision, any person aggrieved by an act or decision of the Secretary, a District Commission, or a district coordinator under the provisions of law listed in section 8503 of this title, or any party by right, may appeal to the Environmental Division, except for an act or decision of the Secretary under subdivision 6086b(3)(E) of this title or governed by section 8506 of this title.

** * **

(c) Notice of the filing of an appeal.

(1) ~~Upon filing an appeal from an act or decision of the District Commission, the appellant shall notify all parties who had party status as of the end of the District Commission proceeding, all friends of the Commission, and the Natural Resources Board that an appeal is being filed. In addition, the appellant shall publish notice not more than 10 days after providing notice as required under this subsection, at the appellant's expense, in a newspaper of general circulation in the area of the project that is the subject of the decision. [Repealed.]~~

** * **

(d) ~~Requirement to participate before the District Commission or the Secretary.~~

~~(1) Participation before District Commission. An aggrieved person shall not appeal an act or decision that was made by a District Commission unless the person was granted party status by the District Commission pursuant to subdivision 6085(c)(1)(E) of this title, participated in the proceedings before the District Commission, and retained party status at the end of the District Commission proceedings. In addition, the person may only appeal those issues under the criteria with respect to which the person was granted party status. However, notwithstanding these limitations, an aggrieved person may appeal an act or decision of the District Commission if the Environmental judge determines that:~~

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

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

~~or~~

~~(C) some other condition exists that would result in manifest injustice if the person's right to appeal was disallowed. [Repealed.]~~

~~(2) Participation before the Secretary.~~

* * *

~~(e) Act 250 jurisdictional determinations by a district coordinator:~~

~~(1) The appellant shall provide notice of the filing of an appeal to each person entitled to notice under subdivisions 6085(c)(1)(A) through (D) of this~~

~~title, to each person on an approved subdivision 6085(c)(1)(E) list, and to the Natural Resources Board.~~

~~(2) Failure to appeal within the time required under subsection (a) of this section shall render the decision of the district coordinator under subsection 6007(c) of this title the final determination regarding jurisdiction under chapter 151 of this title unless the underlying jurisdictional opinion was not properly served on persons listed in subdivisions 6085(c)(1)(A) through (D) of this title and on persons on a subdivision 6085(c)(1)(E) list approved under subsection 6007(c) of this title. [Repealed.]~~

* * *

~~(g) Consolidated appeals. The Environmental Division may consolidate or coordinate different appeals where those appeals all relate to the same project.~~

* * *

~~(i) Deference to Agency technical determinations.—In the adjudication of appeals relating to land use permits under chapter 151 of this title, technical determinations of the Secretary shall be accorded the same deference as they are accorded by a District Commission under subsection 6086(d) of this title. [Repealed.]~~

* * *

~~(k) Limitations on appeals. Notwithstanding any other provision of this section:~~

~~(1) there shall be no appeal from a District Commission decision when the Commission has issued a permit and no hearing was requested or held, or no motion to alter was filed following the issuance of an administrative amendment;~~

~~(2) a municipal decision regarding whether a particular application qualifies for a recorded hearing under 24 V.S.A. § 4471(b) shall not be subject to appeal;~~

~~(3) if a District Commission issues a partial decision under subsection 6086(b) of this title, any appeal of that decision must be taken within 30 days of the date of that decision.~~

~~(l) Representation. The Secretary may represent the Agency of Natural Resources in all appeals under this section. The Chair of the Natural Resources Board may represent the Board in any appeal under this section, unless the Board directs otherwise. If more than one State agency, other than the Board, either appeals or seeks to intervene in an appeal under this section, only the Attorney General may represent the interests of those agencies of the State in the appeal.~~

~~(m) Precedent. Prior decisions of the Environmental Board, Water Resources Board, and Waste Facilities Panel shall be given the same weight and consideration as prior decisions of the Environmental Division.~~

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

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

(2) is a party by right;

(3) is the Natural Resources Board; [Repealed.]

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

(5) qualifies as an “interested person,” as established in 24 V.S.A. § 4465, with respect to appeals under 24 V.S.A. chapter 117; or

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

(o) With respect to review of an act or decision of the Secretary pursuant to 3 V.S.A. § 2809, the Division may reverse the act or decision or amend an allocation of costs to an applicant only if the Division determines that the act, decision, or allocation was arbitrary, capricious, or an abuse of discretion. In the absence of such a determination, the Division shall require the applicant to pay the Secretary all costs assessed pursuant to 3 V.S.A. § 2809.

(p) Administrative record. The Secretary shall certify the administrative record as defined in chapter 170 of this title and shall transfer a certified copy of that record to the Environmental Division when:

~~(1) there is an appeal of an act or decision of the Secretary that is based on that record; or~~

~~(2) there is an appeal of a decision of a District Commission, and the applicant used a decision of the Secretary based on that record to create a presumption under a criterion of subsection 6086(a) of this title that is at issue in the appeal.~~

§ 8505. APPEALS TO THE SUPREME COURT

(a) Any person aggrieved by a decision of the Environmental Division pursuant to this subchapter, any party by right, or any person aggrieved by a decision of the Environmental Review Board may appeal to the Supreme Court within 30 days of following the date of the entry of the order or judgment appealed from, provided that:

(1) the person was a party to the proceeding before the Environmental Division; or

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

(3) the Supreme Court determines that:

(A) there was a procedural defect that prevented the person from participating in the proceeding; or

(B) some other condition exists that would result in manifest injustice if the person's right to appeal were disallowed.

* * *

** * * Environmental Division * * **

Sec. ~~12~~12. 4 V.S.A. § 34 is amended to read:

§ 34. JURISDICTION; ENVIRONMENTAL DIVISION

The Environmental Division shall have:

(1) jurisdiction of matters arising under 10 V.S.A. chapters 201 and 220; and

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

~~(3) original jurisdiction to revoke permits under 10 V.S.A. chapter 151.~~

** * * Report; Transition; Revision Authority; Effective Dates * * **

Sec. ~~13~~13. ENVIRONMENTAL REVIEW BOARD POSITIONS;

APPROPRIATION

(a) The following new positions are created at the Environmental Review Board for the purposes of carrying out this act:

(1) one Staff Attorney I; and

(2) four half-time Environmental Review Board members.

(b) The sum of ~~\$200,000.00~~\$384,000.00 is appropriated to the Environmental Review Board from the General Fund in fiscal year 2023 for the positions established in subsection (a) of this section and for additional operating costs required to implement the appeals process established in this act.

Sec. ~~15~~14. NATURAL RESOURCES BOARD TRANSITION

(a) The Governor shall appoint the members of Environmental Review Board on or before July 1, 2023, and the terms of any Natural Resources Board member not appointed consistent with the requirements of 10 V.S.A. § 6021(a)(1)(A) or (B) shall expire on that day.

(b) As of July 1, 2023, all appropriations and employee positions of the Natural Resources Board are transferred to the Environmental Review Board.

(c) The Environmental Review Board shall adopt rules of procedure for its hearing process pursuant to 10 V.S.A. § 6025(a) on or before July 1, 2024.

Sec. ~~16~~15. ENVIRONMENTAL DIVISION; CONTINUED JURISDICTION

Notwithstanding the repeal of its jurisdictional authority to hear appeals relative to land use permits under Sec. 12 of this act, the Environmental Division of the Superior Court shall continue to have jurisdiction to complete its consideration of any appeal that is pending before it as of July 1, 2024 if the act or appeal has been filed. The Environmental Review Board shall have authority to be a party in any appeals pending under this section until July 1, 2024.

~~*Sec. 17. REPORT: ENVIRONMENTAL REVIEW BOARD*~~

~~*(a) On or before December 31, 2023, the Chair of the Environmental Review Board shall report to the House Committee on Natural Resources,*~~

~~*Fish, and Wildlife and the Senate Committee on Natural Resources and Energy on necessary updates to the Act 250 program.*~~

~~*(b) The report shall include:*~~

~~*(1) how to transition to a system in which Act 250 jurisdiction is based on location, which shall encourage development in appropriate locations and protect natural resources of statewide significance including biodiversity;*~~

~~*(2) how to use the Capability and Development Plan to meet the statewide planning goals;*~~

~~*(3) the effectiveness of the current permit fee structure; and*~~

~~*(4) an assessment of the current level of staffing of the Board and District Commissions, including whether there should be a district coordinator located in every district.*~~

Sec. ~~17~~16. REPORT; ENVIRONMENTAL REVIEW BOARD

~~*(a) On or before December 31, 2023, the Chair of the Environmental Review Board shall report to the House Committees on Natural Resources, Fish, and Wildlife and on Ways and Means and the Senate Committees on Finance and on Natural Resources and Energy on necessary updates to the Act 250 program.*~~

(b) The report shall include:

(1) how to transition to a system in which Act 250 jurisdiction is based on location, which shall encourage development in appropriate locations and protect natural resources of statewide significance, including biodiversity;

(2) how to use the Capability and Development Plan to meet the statewide planning goals;

(3) an assessment of the current level of staffing of the Board and District Commissions, including whether there should be a district coordinator located in every district;

(4) whether the permit fees are sufficient to cover the costs of the program and, if not, a recommendation for a source of revenue to supplement the fees;

(5) whether the permit fees are effective in providing appropriate incentives; and

(6) whether the Board should be able to assess their costs on applicants.

Sec. ~~18~~17. REVISION AUTHORITY

In preparing the Vermont Statutes Annotated for publication in 2022, the Office of Legislative Counsel shall replace all references to the “Natural Resources Board” with the “Environmental Review Board” in Title 3, Title 10, Title 24, Title 29, Title 30, and Title 32.

* * * Effective Dates * * *

Sec. 18. EFFECTIVE DATES

This act shall take effect on passage, except that Secs. 12 and 13 (10 V.S.A. chapter 220; 4 V.S.A. § 34) shall take effect on July 1, 2024.