

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Natural Resources, Fish, and Wildlife to which was
3 referred House Bill No. 492 entitled “An act relating to the structure of the
4 Natural Resources Board” respectfully reports that it has considered the same
5 and recommends that the bill be amended by striking out all after the enacting
6 clause and inserting in lieu thereof the following:

7 * * * Natural Resources Board * * *

8 **Sec. 1. PURPOSE**

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

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

2 § 6021. BOARD; VACANCY; REMOVAL

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

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

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

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 given~~
2 ~~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 and
7 deciding that case and signing the findings and judgments involved. A retiring
8 Chair shall also remain a member for the purpose of certifying questions of law
9 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:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 * * *

14 Sec. 5. 10 V.S.A. § 6028 is amended to read:

15 § 6028. COMPENSATION

16 Members of the ~~Board and~~ District Commissions shall receive per diem pay
17 of \$100.00 and all necessary and actual expenses ~~in accordance with 32 V.S.A.~~
18 ~~§ 1010.~~

1 Sec. 6. 10 V.S.A. § 6084 is amended to read:

2 § 6084. NOTICE OF APPLICATION; HEARINGS; COMMENCEMENT OF
3 REVIEW

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

20 * * *

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

6 * * *

7 Sec. 7. 10 V.S.A. § 6089 is amended to read:

8 § 6089. APPEALS

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

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

18 (2) Participation before District Commission. A person shall not appeal
19 an act or decision that was made by a District Commission unless the person
20 was granted party status by the District Commission pursuant to subdivision
21 6085(c)(1)(E) of this title, participated in the proceedings before the District

1 Commission, and retained party status at the end of the District Commission
2 proceedings. In addition, the person may only appeal those issues under the
3 criteria with respect to which the person was granted party status. However,
4 notwithstanding these limitations, an aggrieved person may appeal an act or
5 decision of the District Commission if the Board determines that:

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

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

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

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

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

20 (5) Notice of appeal shall be filed with the Board within 30 days
21 following the act or decision by the **District Commission**. The Board shall

1 notify the parties who had party status before the District Commission of the
2 filing of any appeal.

3 **(6) Prehearing discovery.**

4 (A) A party may use discovery of expert witnesses who may provide
5 testimony relevant to the appeal. Use of an expert shall follow Vermont Rule
6 of Evidence 702. The use of discovery for experts shall comply with the
7 requirements in the Vermont Rules of Civil Procedure 26-37.

8 (B) Interrogatories may be submitted and shall comply with Vermont
9 Rule of Civil Procedure 33. However, except for interrogatories for expert
10 witnesses, interrogatories shall be limited to discovery of the identity of
11 witnesses and a summary of each witness’s testimony, except by order of the
12 Board for cause shown.

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

15 (D) Parties may only take depositions of expert witnesses, except by
16 order of the Board for cause shown.

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

20 (b) Prior decisions of the former Environmental Board, Water Resources
21 Board, Waste Facilities Panel, and Environmental Division shall be given the

1 same weight and consideration as prior decisions of the Environmental Review
2 Board.

3 (c) An appeal from a decision of the Board under subsection (a) of this
4 section shall be to the Supreme Court by a party as set forth in subsection
5 6085(c) of this title.

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

9 (e) An appeal of a decision by the Board shall be allowed pursuant to
10 3 V.S.A. § 815, including the unreasonableness or insufficiency of the
11 conditions attached to a permit. An appeal from the District Commission shall
12 be allowed for any reason, except no appeal shall be allowed when an
13 application has been granted and no hearing was requested.

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

1 demonstrate a particularized interest protected by this chapter that may be
2 affected by an act or decision by a District Commission.

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

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

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

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

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

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

15 (A) The Board shall serve the notice on all persons listed in
16 subdivisions 6085(c)(1)(A)–(E) of this title and post the notice on its website.

17 (B) If the request pertains to a jurisdictional opinion for which a final
18 determination was requested under subsection (c) of this section, the Board
19 shall:

20 (i) serve the notice on all persons on the approved subdivision
21 6085(c)(1)(E) list; and

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

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

6 Sec. 9. 10 V.S.A. § 6083a is amended to read:

7 § 6083a. ACT 250 FEES

8 * * *

9 (i) All persons filing an appeal, cross appeal, or petition from a District
10 Commission decision or jurisdictional determination shall pay a fee of
11 \$295.00, plus publication costs.

12 * * * Appeals * * *

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

14 CHAPTER 220. CONSOLIDATED ENVIRONMENTAL APPEALS

15 § 8501. PURPOSE

16 It is the purpose of this chapter to:

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

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

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

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

10 ~~(5)~~(4) consolidate appeals of decisions related to renewable energy
11 generation plants and telecommunications facilities with review under,
12 respectively, 30 V.S.A. §§ 248 and 248a, with appeals and consolidation of
13 proceedings pertaining to telecommunications facilities occurring only while
14 30 V.S.A. § 248a remains in effect.

15 § 8502. DEFINITIONS

16 As used in this chapter:

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

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

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

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

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

6 (A) the applicant;

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

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

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

13 (E) the solid waste management district in which the land is located,
14 if the development or subdivision constitutes a facility pursuant to subdivision
15 6602(10) of this title;

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

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

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

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

12 § 8503. APPLICABILITY

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

17 * * *

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

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

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

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

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

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

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

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

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

1 § 8504. APPEALS TO THE ENVIRONMENTAL DIVISION

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

8 * * *

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

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

17 [Repealed.]

18 * * *

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

1 ~~(1) Participation before District Commission. An aggrieved person shall~~
2 ~~not appeal an act or decision that was made by a District Commission unless~~
3 ~~the person was granted party status by the District Commission pursuant to~~
4 ~~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 Environmental judge~~
10 ~~determines that:~~

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

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

14 ~~or~~

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

17 (2) Participation before the Secretary.

18 * * *

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

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

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

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

10 * * *

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

13 * * *

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

18 [Repealed.]

19 * * *

20 (k) Limitations on appeals. Notwithstanding any other provision of this
21 section,

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

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

8 ~~(3) if a District Commission issues a partial decision under subsection~~
9 ~~6086(b) of this title, any appeal of that decision must be taken within 30 days~~
10 ~~of the date of that decision.~~

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

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

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

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

5 (2) is a party by right;

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

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

8 (5) qualifies as an “interested person,” as established in 24 V.S.A.

9 § 4465, with respect to appeals under 24 V.S.A. chapter 117; or

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

12 (o) With respect to review of an act or decision of the Secretary pursuant to
13 3 V.S.A. § 2809, the Division may reverse the act or decision or amend an
14 allocation of costs to an applicant only if the Division determines that the act,
15 decision, or allocation was arbitrary, capricious, or an abuse of discretion. In
16 the absence of such a determination, the Division shall require the applicant to
17 pay the Secretary all costs assessed pursuant to 3 V.S.A. § 2809.

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

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

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

7 § 8505. APPEALS TO THE SUPREME COURT

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

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

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

16 (3) the Supreme Court determines that:

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

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

21 * * *

1 * * * Environmental Division * * *

2 Sec. 11. 4 V.S.A. § 34 is amended to read:

3 § 34. JURISDICTION; ENVIRONMENTAL DIVISION

4 The Environmental Division shall have:

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

6 and

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

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

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

10 * * * Judicial Nominating Board * * *

11 Sec. 12. 4 V.S.A. § 601 is amended to read:

12 § 601. JUDICIAL NOMINATING BOARD CREATED; COMPOSITION

13 (a) The Judicial Nominating Board is created for the nomination of
14 Supreme Court Justices, Superior judges, magistrates, the Chair and members
15 of the Environmental Review Board, and the Chair and members of the Public
16 Utility Commission.

17 * * *

18 (d) The Judicial Nominating Board shall adopt rules under 3 V.S.A.
19 chapter 25 ~~which~~ that shall establish criteria and standards for the nomination
20 of candidates for Justices of the Supreme Court, Superior judges, magistrates,
21 the Chair and members of the Environmental Review Board, and the Chair and

1 members of the Public Utility Commission based on the attributes identified in
2 subsection 602(d) of this title. The application form shall not be included in
3 the rules and may be developed and periodically revised at the discretion of the
4 Board.

5 * * *

6 Sec. 13. 4 V.S.A. § 602b is added to read:

7 § 602b. DUTIES; ENVIRONMENTAL REVIEW BOARD MEMBERS

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

16 (b) A candidate for the position of member of the Environmental Review
17 Board shall not be required to be an attorney; however, if the candidate is
18 admitted to practice law in Vermont, the Judicial Nominating Board shall
19 submit the candidate's name to the Court Administrator, who shall disclose to
20 the Board information solely about professional disciplinary action taken or
21 pending concerning the candidate. If a candidate is not admitted to practice

1 law in Vermont but practices a profession requiring licensure, certification, or
2 other professional regulation by the State, the Judicial Nominating Board shall
3 submit the candidate’s name to the State professional regulatory entity, and
4 that entity shall disclose to the Board any professional disciplinary action taken
5 or pending concerning the candidate.

6 (c) Candidates shall be sought who have experience, expertise, or skills
7 relating to one or more of the following areas: environmental science, natural
8 resources law and policy, land use planning, community planning, or
9 environmental justice.

10 (d) The Board shall ensure a candidate possesses the following attributes:

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

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

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

16 (4) Availability. A candidate shall have adequate time to dedicate to the
17 position.

18 Sec. 14. 4 V.S.A. § 603 is amended to read:

19 § 603. APPOINTMENT OF JUSTICES, JUDGES, MAGISTRATES;_;

20 PUBLIC UTILITY COMMISSION CHAIR_; AND MEMBERS_;

21 ENVIRONMENTAL REVIEW BOARD CHAIR AND MEMBERS

1 Whenever the Governor appoints a Supreme Court Justice, a Superior
2 Judge, a magistrate, the Chair or a member of the Public Utility Commission,
3 ~~or a member of the Public Utility Commission~~ the Chair or a member of the
4 Environmental Review Board, ~~he or she~~ the Governor shall select from the list
5 of names of qualified persons submitted by the Judicial Nominating Board
6 pursuant to law. The names of candidates submitted and not selected shall
7 remain confidential.

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

9 Sec. 15. ENVIRONMENTAL REVIEW BOARD POSITIONS;

10 APPROPRIATION

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

13 (1) one Staff Attorney 1; and

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

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

1 Sec. 16. NATURAL RESOURCES BOARD TRANSITION

2 (a) As of January 1, 2023, all appropriations and employee positions of the
3 Natural Resources Board are transferred to the Environmental Review Board.

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

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

10 Sec. 17. REPORT; ENVIRONMENTAL REVIEW BOARD

11 (a) On or before December 31, 2023, the Chair of the Environmental
12 Review Board shall report to the House Committee on Natural Resources,
13 Fish, and Wildlife and the Senate Committee on Natural Resources and Energy
14 on necessary updates to the Act 250 program.

15 (b) The report shall include:

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

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

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

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

4 Sec. 18. ENVIRONMENTAL DIVISION; CONTINUED JURISDICTION

5 Notwithstanding the repeal of its jurisdictional authority to hear appeals
6 relative to land use permits under Sec. 10 of this act, the Environmental
7 Division shall continue to have jurisdiction to complete its consideration of any
8 such appeal that is pending before it as of July 1, 2023 if, with respect to such
9 act or appeal, mediation or discovery has commenced, a dispositive motion has
10 been filed, or a trial has begun.

11 Sec. 19. REVISION AUTHORITY

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

16 * * * Effective Dates * * *

17 Sec. 20. EFFECTIVE DATES

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

20

21

1 (Committee vote: _____)

2

3

Representative _____

4

FOR THE COMMITTEE