

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. The
18 Board would provide oversight, management, and training to the Act 250
19 program staff and District Commissions and develop Act 250 program policy
20 through permit decisions and rulemaking.

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

2 § 6021. BOARD; VACANCY; REMOVAL

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

5 (1) The Board shall consist of five members appointed by the Governor,
6 after review and approval by the Environmental Review Board Nominating
7 Committee in accordance with subdivision (2) of this section and confirmed
8 with the advice and consent of the Senate, so that one appointment expires in
9 each year. The Chair shall be a full-time position, and the other four members
10 shall be half-time positions. In making these appointments, the Governor and
11 the Senate shall give consideration to candidates who have experience,
12 expertise, or skills relating to ~~the environment or land use~~ one or more of the
13 following areas: environmental science, natural resources law and policy, land
14 use planning, community planning, or environmental justice.

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

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

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

8 (A) ~~Alternates shall be appointed for terms of four years, with initial~~
9 ~~appointments being staggered~~ The Environmental Review Board Nominating
10 Committee shall make a public announcement prior to when a vacancy will
11 occur on the Environmental Review Board.

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

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

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

9 (c) Removal. Notwithstanding the provisions of 3 V.S.A. § 2004, members
10 shall only be removable for cause ~~only, except the Chair, who shall serve at the~~
11 ~~pleasure of the Governor~~ by the remaining members of the Board in
12 accordance with the Vermont Administrative Procedures Act. The Board shall
13 adopt rules pursuant to 3 V.S.A. chapter 25 to define the basis and process for
14 removal.

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

20 (e) Retirement from office. When a Board member who hears all or a
21 substantial part of a case retires from office before the case is completed, the

1 member may remain a member of the Board, at the member’s discretion, for
2 the purpose of concluding and deciding that case and signing the findings and
3 judgments involved. A retiring Chair shall also remain a member for the
4 purpose of certifying questions of law if a party appeals to the Supreme Court.
5 For the service, the member shall receive a reasonable compensation to be
6 fixed by the remaining members of the Board and necessary expenses while on
7 official business.

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

9 § 6032. ENVIRONMENTAL REVIEW BOARD NOMINATING

10 COMMITTEE

11 (a) Creation. The Environmental Review Board Nominating Committee is
12 created for the purpose of assessing the qualifications of applicants for
13 appointment to the Environmental Review Board in accordance with section
14 6021 of this title.

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

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

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

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

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

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

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

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

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

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

2 (1) operating procedures of the Committee;

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

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

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

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

15 (j) Duties.

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

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

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

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

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

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

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

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

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

2 § 6025. RULES

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

6 * * *

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

8 § 6027. POWERS

9 (a) The Board and District Commissions ~~each~~ shall have supervisory
10 authority in environmental matters respecting projects within their jurisdiction
11 and shall apply their independent judgment in determining facts and
12 interpreting law. Each shall have the power, with respect to any matter within
13 its jurisdiction, to:

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

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

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

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

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

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

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

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

17 (f) The Board shall publish its decisions online. The Board may publish
18 online or contract to publish annotations and indices of its decisions, the
19 decisions of the Environmental Division of the Superior Court and the
20 Supreme Court, and the text of those decisions. The published product shall be

1 available at a reasonable rate to the general public and at a reduced rate to
2 libraries and governmental bodies within the State.

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

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

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

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

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

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

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

1 (h) ~~The Natural Resources Board~~ may hear appeals of fee refund requests
2 under section 6083a of this title. The Board shall hear appeals of decisions
3 made by District Commissions and district coordinators.

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

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

10 * * *

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

12 § 6028. COMPENSATION

13 Members of the ~~Board and~~ District Commissions shall receive per diem pay
14 of \$100.00 and all necessary and actual expenses ~~in accordance with 32 V.S.A.~~
15 ~~§ 1010. Per diem pay shall be available for time spent reviewing permit~~
16 ~~applications and for time spent making decisions on permit applications~~ **as**
17 **authorized by the Executive Director.**

18 Sec. 7. 10 V.S.A. § 6022 is amended to read:

19 § 6022. PERSONNEL

20 (a) Regular personnel. The Board may appoint legal counsel, scientists,
21 engineers, experts, investigators, temporary employees, and administrative

1 personnel as it finds necessary in carrying out its duties, ~~unless the Governor~~
2 ~~shall otherwise provide~~ in providing personnel to assist the District
3 Commissions and in investigating matters within its jurisdiction.

4 (b) Personnel for particular proceedings.

5 (1) Retention.

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

9 (i) to assist the Board in any proceeding before it under this
10 chapter; and

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

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

16 (2) Assessment of costs.

17 (A) The Board may allocate to an applicant the portion of its
18 expenses incurred by retaining additional personnel for a proceeding. On
19 petition of an applicant to which costs are proposed to be allocated, the Board
20 shall review and determine, after opportunity for hearing, the necessity and

1 reasonableness of those costs, having due regard for the size and complexity of
2 the project, and may amend or revise an allocation.

3 (B) Prior to allocating costs, the Board shall make a determination of
4 the purpose and use of the funds to be raised under this section, identify the
5 recipient of the funds, provide for allocation of costs among applicants to be
6 assessed, indicate an estimated duration of the proceedings, and estimate the
7 total costs to be imposed. With the approval of the Board, estimates may be
8 revised as necessary. From time to time during the progress of the work, the
9 Board shall render to the applicant detailed statements showing the amount of
10 money expended or contracted for in the work of additional personnel, which
11 statements shall be paid into the State Treasury at the time and in the manner
12 as the Board may reasonably direct.

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

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

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

1 (2) assisting the Board in its duties and administering the requirements

2 of this chapter;

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

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

6 Sec. 8. 10 V.S.A. § 6084 is amended to read:

7 § 6084. NOTICE OF APPLICATION; HEARINGS; COMMENCEMENT OF
8 REVIEW

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

1 request and for good cause, the District Commission may authorize the
2 applicant to provide a partial list of adjoining landowners in accordance with
3 Board rules.

4 * * *

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

10 * * *

11 Sec. 9. 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(c) 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~~

1 ~~circumvent the requirements of this chapter shall be considered an act or~~
2 ~~decision of the District Commission.~~

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

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

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

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

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

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

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

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

13 (6) Prehearing discovery.

14 (A) A party may obtain discovery of expert witnesses who may
15 provide testimony relevant to the appeal. Expert witness testimony shall be in
16 accordance with the Vermont Rules of Evidence. The use of discovery for
17 experts shall comply with the requirements in the Vermont Rules of Civil
18 Procedure 26–37.

19 (B) Interrogatories served on nonexpert witnesses shall be limited to
20 discovery of the identity of witnesses and a summary of each witness's
21 testimony, except by order of the Board for cause shown. Interrogatories

1 served on expert witnesses shall be in accordance with the Vermont Rules of
2 Civil Procedure.

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

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

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

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

13 (c) An appeal from a decision of the Board under subsection (a) of this
14 section shall be to the Supreme Court by a party as set forth in subsection
15 6085(c) of this title.

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

19 (e) An appeal of a decision by the Board shall be allowed pursuant to
20 3 V.S.A. § 815, including the unreasonableness or insufficiency of the
21 conditions attached to a permit. An appeal from the District Commission shall

1 be allowed for any reason, except no appeal shall be allowed when an
2 application has been granted and no hearing was requested.

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

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

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

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

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

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

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

6 § 6007. ACT 250 DISCLOSURE STATEMENT; JURISDICTIONAL
7 DETERMINATION

8 * * *

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

1 of persons who shall be notified by the district coordinator because they are
2 adjoining property owners or other persons who would be likely to be able to
3 demonstrate a particularized interest protected by this chapter that may be
4 affected by an act or decision by a District Commission.

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

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

11 (2) Failure to appeal within 30 days following the issuance of the
12 jurisdictional opinion shall render the decision of the district coordinator under
13 subsection (c) of this section the final determination regarding jurisdiction
14 unless the underlying jurisdictional opinion was not properly served on persons
15 listed in subdivisions 6085(c)(1)(A) through (D) of this title and on persons on
16 a subdivision 6085(c)(1)(E) list approved under subsection (c) of this section.

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

18 § 6083a. ACT 250 FEES

19 * * *

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

3 ~~(5)~~(4) consolidate appeals of decisions related to renewable energy
4 generation plants and telecommunications facilities with review under,
5 respectively, 30 V.S.A. §§ 248 and 248a, with appeals and consolidation of
6 proceedings pertaining to telecommunications facilities occurring only while
7 30 V.S.A. § 248a remains in effect.

8 § 8502. DEFINITIONS

9 As used in this chapter:

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

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

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

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

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

20 (A) the applicant;

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

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

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

6 (E) the solid waste management district in which the land is located,
7 if the development or subdivision constitutes a facility pursuant to subdivision
8 6602(10) of this title;

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

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

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

19 (8) “Secretary” means the Secretary of Natural Resources or the
20 Secretary’s duly authorized representative. As used in this chapter,
21 “Secretary” shall also mean the Commissioner of Environmental Conservation,

1 the Commissioner of Forests, Parks and Recreation, and the Commissioner of
2 Fish and Wildlife, with respect to those statutes that refer to the authority of
3 that commissioner or department.

4 § 8503. APPLICABILITY

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

9 * * *

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

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

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

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

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

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

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

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

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

14 § 8504. APPEALS TO THE ENVIRONMENTAL DIVISION

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

21 * * *

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

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

9 [Repealed.]

10 * * *

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

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

1 ~~an act or decision of the District Commission if the Environmental judge~~
2 ~~determines that:~~

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

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

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

9 (2) Participation before the Secretary.

10 * * *

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

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

16 ~~(2) Failure to appeal within the time required under subsection (a) of~~
17 ~~this section shall render the decision of the district coordinator under~~
18 ~~subsection 6007(c) of this title the final determination regarding jurisdiction~~
19 ~~under chapter 151 of this title unless the underlying jurisdictional opinion was~~
20 ~~not properly served on persons listed in subdivisions 6085(c)(1)(A) through~~

1 ~~(D) of this title and on persons on a subdivision 6085(c)(1)(E) list approved~~
2 ~~under subsection 6007(e) of this title. [Repealed.]~~

3 * * *

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

6 * * *

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

12 * * *

13 (k) Limitations on appeals. Notwithstanding any other provision of this
14 section;

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

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

1 ~~(3) if a District Commission issues a partial decision under subsection~~
2 ~~6086(b) of this title, any appeal of that decision must be taken within 30 days~~
3 ~~of the date of that decision.~~

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

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

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

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

18 (2) is a party by right;

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

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

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

2 § 4465, with respect to appeals under 24 V.S.A. chapter 117; or

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

5 (o) With respect to review of an act or decision of the Secretary pursuant to
6 3 V.S.A. § 2809, the Division may reverse the act or decision or amend an
7 allocation of costs to an applicant only if the Division determines that the act,
8 decision, or allocation was arbitrary, capricious, or an abuse of discretion. In
9 the absence of such a determination, the Division shall require the applicant to
10 pay the Secretary all costs assessed pursuant to 3 V.S.A. § 2809.

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

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

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

1 § 8505. APPEALS TO THE SUPREME COURT

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

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

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

10 (3) the Supreme Court determines that:

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

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

15 * * *

16 * * * Environmental Division * * *

17 Sec. 13. 4 V.S.A. § 34 is amended to read:

18 § 34. JURISDICTION; ENVIRONMENTAL DIVISION

19 The Environmental Division shall have:

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

1 (2) jurisdiction of matters arising under 24 V.S.A. chapter 61,
2 subchapter 12 and 24 V.S.A. chapter 117; ~~and~~
3 ~~(3) original jurisdiction to revoke permits under 10 V.S.A. chapter 151.~~
4 * * * Report; Transition; Revision Authority; Effective Dates * * *

5 Sec. 14. ENVIRONMENTAL REVIEW BOARD POSITIONS;

6 APPROPRIATION

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

9 (1) one Staff Attorney 1; and

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

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

15 Sec. 15. NATURAL RESOURCES BOARD TRANSITION

16 (a) The Governor shall appoint the members of Environmental Review
17 Board on or before July 1, 2023, and the terms of any Natural Resources Board
18 member not appointed consistent with the requirements of 10 V.S.A.
19 § 6021(a)(1)(A) or (B) shall expire on that day.

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

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

3 Sec. 16. ENVIRONMENTAL DIVISION; CONTINUED JURISDICTION

4 Notwithstanding the repeal of its jurisdictional authority to hear appeals
5 relative to land use permits under Sec. 12 of this act, the Environmental
6 Division of the Superior Court shall continue to have jurisdiction to complete
7 its consideration of any appeal that is pending before it as of July 1, 2024 if the
8 act or appeal has been filed. The Environmental Review Board shall have
9 authority to be a party in any appeals pending under this section until July 1,
10 2024.

11 Sec. 17. REPORT; ENVIRONMENTAL REVIEW BOARD

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

16 (b) The report shall include:

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

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

