

* * * Transportation Board * * *

Sec. 10. 5 V.S.A. chapter 3 is redesignated to read:

CHAPTER 3. PROCEEDINGS **BY THE BOARD**; ~~APPEAL TO SUPERIOR~~
~~COURT~~ JUDICIAL REVIEW

Sec. 11. 5 V.S.A. § 37 is amended to read:

§ 37. MEMBERS; TERMS; RETIREMENT; APPEAL

(a) When a Board member who hears all or a substantial part of a case retires from office before the case is completed, ~~he or she~~ the individual shall remain a member of the Board for the purpose of concluding and deciding the case, and signing the findings, orders, decrees, and judgments of the case. A retiring chair shall also remain a member for the purpose of certifying questions of law if appeal is taken.

(b) A case shall be deemed completed when the Board enters a final order even though ~~the order is appealed to a Superior Court and judicial review is sought pursuant to 19 V.S.A. § 5(c) or~~ the case remanded to the Board. Upon remand, the Board then in office may consider relevant evidence, including any part of the transcript of testimony in the proceedings prior to appeal.

Sec. 12. 5 V.S.A. § 40 is amended to read:

§ 40. PLEADINGS; RULES OF PRACTICE; FINDINGS OF FACT

(a) The forms, pleadings, and rules of practice and procedure before the Board shall be prescribed by the Board.

1 (b) The Board shall hear all matters within its jurisdiction and make
2 findings of fact. It shall state its rulings of law when required. Upon ~~appeal to~~
3 ~~a Superior Court~~ judicial review pursuant to 19 V.S.A. § 5(c), the Board's
4 findings of fact shall be accepted unless clearly erroneous.

5 Sec. 13. 5 V.S.A. §§ 43 and 44 are amended to read:

6 § 43. ~~REVIEW BY SUPERIOR COURT~~ JUDICIAL REVIEW

7 A party to a cause who feels aggrieved by the final order, judgment, or
8 decree of the Board may ~~appeal to a Superior Court under Rule 74 of the~~
9 ~~Vermont Rules of Civil Procedure~~ seek judicial review pursuant to 19 V.S.A.
10 § 5(c). However, the Board, before final judgment, may permit an
11 interlocutory appeal to be taken by any party pursuant to a Superior Court 19
12 V.S.A. § 5(c) for determination of questions of law in the same manner as the
13 Supreme Court may by rule provide for appeals before final judgment from a
14 Superior Court. Notwithstanding the provisions of the Vermont Rules of Civil
15 Procedure or the Vermont Rules of Appellate Procedure, neither the time for
16 filing a notice of appeal nor the filing of a notice of appeal, as provided in this
17 section, shall operate as a stay of enforcement of an order of the Board unless
18 the Board or ~~a Superior~~ the Supreme Court grants a stay under the provisions
19 of section 44 of this ~~title~~ chapter.

20 § 44. ~~POWERS OF SUPERIOR~~ THE SUPREME COURT

1 ~~A Superior~~ Upon appeal to the Supreme Court, the Court may reverse or
2 affirm the judgments, orders, or decrees of the Transportation Board and may
3 remand a cause to it with mandates, as law or equity shall require; and the
4 Board shall enter its judgment, order, or decree in accordance with these
5 mandates. Appeals to the ~~Superior~~ Supreme Court shall not have the effect of
6 vacating any judgment, order, or decree of the Board, but the ~~Superior~~
7 Supreme Court, upon notice to interested parties, may suspend execution of a
8 Board judgment under a decree as justice and equity require unless otherwise
9 specifically provided by law.

10 Sec. 14. 5 V.S.A. § 207(d) is amended to read:

11 (d) The application for a certificate of approval of the site selected shall be
12 in writing and substantially describe the property involved and the general
13 purposes for which it is to be acquired and the manner in which the acquisition
14 is asserted to serve the public interest. The application shall designate the
15 names of all owners or persons known to be interested in lands adjoining the
16 property and their residences, if known, and shall contain such further matter
17 as the Board by rule shall determine. The application shall be supported by
18 documentation showing that the proposed facility has received municipal
19 approval. After evaluating the application, the Board shall issue its order
20 giving notice of the time and place of hearing on the application. The
21 applicant shall give notice of the proceedings to all persons owning or

1 interested in adjoining lands by delivery of a true copy of the application and
2 order for hearing by registered or certified mail to the last known address of
3 each of the persons; the notice to be mailed at least 12 days prior to the date of
4 the hearing. Notice of the hearing and a general statement of the purpose shall
5 be published at least once in a newspaper of common circulation in the town
6 where the property described in the application is situated at least two days
7 before the date of the hearing, and a similar notice shall be posted in a public
8 place at least 12 days before the hearing. Upon compliance by the applicant
9 with the foregoing provisions for notice, the Board shall hear the applicant and
10 all parties interested on the question of approval of the site or sites and shall
11 consider and determine whether in the public interest the application ought to
12 be granted. Whenever the Board makes an order granting or denying a
13 certificate of approval of an airport, or a restricted landing area, approval to use
14 or operate an airport or a restricted landing area or other air navigation facility,
15 an aggrieved person may ~~have the decision reviewed on the record by the~~
16 ~~Superior Court pursuant to Rule 74 of the Vermont Rules of Civil Procedure~~
17 seek judicial review pursuant to 19 V.S.A. § 5(c).

18 Sec. 14a. 5 V.S.A. § 652 is redesignated to read:

19 § 652. SUPERIOR COURT JUDICIAL REVIEW

20 Sec. 14b. 5 V.S.A. § 3639 is amended to read:

21 § 3639. FARM CROSSINGS AND CATTLE GUARDS; CONSTRUCTION

1 **AND MAINTENANCE; JUDICIAL REVIEW**

2 (a) A person ~~or corporation~~ owning or operating a railroad shall construct
3 and maintain farm crossings of the road for the use of the proprietors of lands
4 adjoining the railroad, and cattle guards at all farm and road crossings
5 sufficient to prevent cattle and animals from getting on the railroad. A farm
6 crossing may be temporarily or permanently closed or discontinued by mutual
7 agreement between all parties having an interest therein. If no such mutual
8 agreement can be reached by such interested parties, then a person ~~or~~
9 ~~corporation~~ owning or operating a railroad and desiring to close any farm
10 crossing shall make application to the Transportation Board. The Board shall
11 thereupon give notice to all parties interested, in such manner as the Board
12 may direct, of hearing on the application, the hearing to be in the county where
13 such crossing is located. After the hearing, a person ~~or corporation~~ owning or
14 operating a railroad shall not close such farm crossing without the approval of
15 the Transportation Board. A person aggrieved by the closing of a farm
16 crossing after January 1, 1955 by a person ~~or corporation~~ owning or operating
17 a railroad may notify the Transportation Board by registered or certified mail
18 of the closing, and thereupon the Board shall conduct a hearing. Notice and
19 place of hearing shall be as set forth in this subsection. The Transportation
20 Board may require the reopening of any such crossing and make such other
21 order as is permitted in section 3649 of this title. At any such hearing, the

1 burden of proof shall rest with the person or persons effecting or seeking to
2 effect the closing of such farm crossing. Any person aggrieved by ~~an~~ the final
3 order of the Transportation Board, who was a party to the proceedings, may, in
4 accordance with Rule 74 of the Vermont Rules of Civil Procedure, appeal to
5 the Superior Court, whereupon such cause shall be tried as an original action
6 brought under the provisions of 12 V.S.A. § 402 seek judicial review pursuant
7 to 19 V.S.A. § 5(c).

8 (b) A person ~~or railroad corporation~~ closing any farm crossing in violation
9 of a provision of this section or failing to comply with any such order shall be
10 fined not less than \$50.00 nor more than \$500.00 and any person aggrieved by
11 such violation may recover his or her damages in an action on this statute.

12 Sec. 15. 5 V.S.A. § 3788 is amended to read:

13 § 3788. ORDERS OF BOARD; ~~APPEALS~~ JUDICIAL REVIEW

14 The order of the Board relating to any matter upon which it may act under
15 the authority of this chapter shall be communicated in writing to the petitioners
16 and to all persons to whom notice of the hearing on such petition was given.
17 Any person aggrieved by such order, who was a party to such proceedings,
18 may ~~appeal from such order to the Superior Court in accordance with Rule 74~~
19 ~~of the Vermont Rules of Civil Procedure~~ seek judicial review pursuant to 19
20 V.S.A. § 5(c).

21 Sec. 16. 9 V.S.A. § 4100b is amended to read:

1 § 4100b. ENFORCEMENT; TRANSPORTATION BOARD

2 (a) The Transportation Board established in 19 V.S.A. § 3 shall enforce the
3 provisions of this chapter.

4 * * *

5 (h) Within 20 days after any order or decision of the Board authorized
6 under this chapter, any party to the proceeding may apply for a rehearing with
7 respect to any matter determined in the proceeding or covered or included in
8 the order or decision. The application for rehearing shall set forth fully every
9 ground upon which it is claimed that the decision or order complained of is
10 unlawful or unreasonable. No appeal from any order or decision of the Board
11 shall be taken unless the appellant makes an application for rehearing as
12 provided in this subsection, and when the application for rehearing has been
13 made, no ground not set forth in the application shall be urged, relied on, or
14 given any consideration by the Board unless the Board for good cause shown
15 allows the appellant to specify additional grounds. Any party to the
16 proceeding may appeal the final order, including all interlocutory orders or
17 decisions, pursuant to the Superior Court 19 V.S.A. § 5(c) within 30 days after
18 the date the Board rules on the application for reconsideration of the final order
19 or decision. All findings of the Board upon all questions of fact properly
20 before the court shall be prima facie lawful and reasonable. The order or
21 decision appealed from shall not be set aside or vacated except for errors of

1 law. No additional evidence shall be heard or taken by the ~~Superior~~ Supreme
2 Court on appeals from orders or decisions by the Board authorized under this
3 title.

4 (i) In cases where the Board finds that a violation of this chapter has
5 occurred or there has been a failure to show good cause under section 4089 or
6 4098 of this title, the ~~Superior Court~~ the Board, upon petition, shall determine
7 reasonable attorney's fees and costs and award them to the prevailing party.

8 Sec. 17. 19 V.S.A. § 5 is amended to read:

9 § 5. TRANSPORTATION BOARD; POWERS AND DUTIES

10 (a) General duties and responsibilities; exceptions. The regulatory and
11 quasi-judicial functions relating to transportation shall be vested in the Board,
12 except that the duties and responsibilities of the Commissioner of Motor
13 Vehicles in Titles 23 and 32, including all quasi-judicial powers, shall continue
14 to be vested in the Commissioner.

15 (b) Naming transportation facilities.

16 (1) Except as otherwise authorized by law, the Board is the sole
17 authority responsible for naming transportation facilities owned, controlled, or
18 maintained by the State, including highways and the bridges thereon, airports,
19 rail facilities, rest areas, and welcome centers. The Board shall exercise its
20 naming authority only upon petition of the legislative body of a municipality of

1 the State, of the head of an Executive Branch agency or department of the
2 State, or of 50 Vermont residents.

3 (2) The Board shall hold a public hearing for each facility requested to
4 be named. The Board shall adopt rules governing notice and conduct of
5 hearings, the standards to be applied in rendering decisions under this
6 subsection, and any other matter necessary for the just disposition of naming
7 requests. The Board shall issue a decision, which shall be subject to review on
8 the record ~~by a Superior Court~~ pursuant to ~~Rule 74 of the Vermont Rules of~~
9 ~~Civil Procedure~~ subsection (c) of this section. The Board may delegate the
10 responsibility to hold a hearing to a hearing officer or a single Board member,
11 subject to the procedure of subsection (c) of this section, but shall not be bound
12 by 3 V.S.A. chapter 25 in carrying out its duties under this subsection.

13 (c) Hearing examiners; report of findings; final orders; judicial review.
14 The Board may delegate the responsibility to hear quasi-judicial matters, and
15 other matters as it may deem appropriate, to a hearing examiner or a single
16 Board member, to hear a case and make findings in accordance with 3 V.S.A.
17 chapter 25, except that highway condemnation proceedings shall be conducted
18 pursuant to the provisions of chapter 5 of this title. A hearing examiner or
19 single Board member so appointed shall report the findings of fact in writing to
20 the Board. Any order resulting from those findings shall be rendered only by a
21 majority of the Board. Final orders of the Board issued pursuant to section 20

1 of this title (small claims against the Agency) may be reviewed on the record
2 by a Superior Court pursuant to Rule 74 of the Vermont Rules of Civil
3 Procedure. All other final orders of the Board may be reviewed on the record
4 by the Supreme Court.

5 (d) Specific duties and responsibilities. The Board shall:

6 * * *

7 (e) Offices and assistance. Suitable offices and office equipment shall be
8 provided by the State for the Board at Montpelier. The Board may employ
9 clerical or other employees and assistants whom it deems necessary in the
10 performance of its duties and in the investigation of matters within its
11 jurisdiction.

12 (f) Jurisdiction; subpoenas; witness fees. The Board shall have the power
13 to determine and adjudicate all matters over which it is given jurisdiction. It
14 may render judgments and make orders and decrees. Whenever the Board is
15 sitting in a quasi-judicial capacity, it may issue subpoenas for the testimony of
16 witnesses or the production of evidence. The fees for travel and attendance of
17 witnesses shall be the same as for witnesses and officers appearing before a
18 Civil Division of the Superior Court.

19 (g) Reports to the General Assembly. From time to time, the Board may
20 report to the General Assembly with suggestions of amendment to existing law
21 or of new legislation as it deems necessary and any information concerning the

1 companies, matters, and things under the jurisdiction of the Board and Agency
2 that, in its opinion, will be of interest to the General Assembly.

3 (h) Appeals from the Agency to the Board. Unless otherwise provided by
4 law, when an appeal is allowed from the Agency to the Board, the appeal shall
5 be taken by filing a notice of appeal with the Secretary within 30 days of the
6 date of the Agency decision from which the appeal is taken. The Secretary
7 shall promptly forward the notice of appeal to the Board, together with the
8 Agency's record of decision.

9 * * * Repeal of 5 V.S.A. Chapter 5 * * *

10 Sec. 17a. REPEAL

11 5 V.S.A. chapter 5 (assessments to support Agency of Transportation and
12 Transportation Board) is repealed.