

H.492- HNRFW strike all
Section by Section
24 February 2022

Sec. 1 is a purpose section.

Sec. 2 amends 10 V.S.A. § 6021, which establishes the Natural Resources Board. This section changes the name of the Board to the Environmental Review Board. The Board shall have 5 members appointed by the Governor after applicants are reviewed by the Environmental Review Board Nominating Committee. The Chair shall be a full-time position, and the other four members shall be half-time positions. It adds language for types of skills sought and encourages diversity in the members of the Board. Terms are for 5 years. There are no alternates. Terms start on July 1 and end on June 30. Vacancies are to be filled for remainder of term. Members may seek reappointment. Members are only removable by the other Board members for cause after notice and a hearing, using procedures adopted by the Board. Retiring members may remain part of a case until it is concluded.

Sec. 3 adds a new section, 10 V.S.A. § 6032, which establishes the Environmental Review Board Nominating Committee. The Nominating Committee shall advertise vacancies on the Board, review applicants for Board positions, and recommend qualified candidates to the Governor. The Committee shall be made up for 3 members of the Executive Branch appointed by the Governor, with at least one from the Dept of HR; 2 members of the House appointed by the Speaker; and 2 members of the Senate appointed by the Committee on Committees. Terms for Committee members shall last for 2 years.

Sec. 4 amends 10 V.S.A. § 6025. It directs the Board to adopt rules of procedure for hearing appeals.

Sec 5. amends 10 V.S.A. § 6027, the powers of the Board. It adds language reaffirming the supervisory authority of the Board and District Commissions. It requires the Board to publish its decisions online. It gives the Board the power to hear appeals. This is in addition to the Board's existing duties in statute, which include:

- administer oaths, take depositions, subpoena and compel the attendance of witnesses, and require the production of evidence
- enter upon lands of parties before it and for investigations
- apply and receive grants
- manage workload of District Commissions.
- allow for joint hearings
- publish index of decisions, including its own
- manage process for issuing land use permits
- initiate enforcement
- initiate and hear petitions for revocation of permits (this is a change; the Environmental Court hears these petitions currently)
- hear appeals for fee refund requests

Sec. 6 amends 10 V.S.A. § 6028, which provides the compensation for Board members and District Commissions. It strikes reference to members of the Board, as they will now be salaried positions. It also raises the per diem for District Commissioners from \$50 to \$100 per day and clarifies that per diems are available for all work as approved by the Executive Director.

Sec. 7 amends 10 V.S.A. § 6022, which is the section on Personnel. It gives the Board authority to hire additional permanent personnel and personnel for individual proceedings. It also the Board to bill back applicants for the cost of personnel used for specific cases.

It also states that the Board shall hire an Executive Director. The duties of the Executive Director shall be:

- (1) supervising and administering the operation and implementation of Act 250 and the Board's rules;
- (2) assisting the Board in its duties and administering Act 250;
- (3) employing such staff as may be required to carry out the functions of the Board; and
- (4) preparing an annual budget for submission to the Board.

Sec. 8 amends 10 V.S.A. § 6084. It shifts the burden of providing notice of applications to the District Commissions and requires notice be posted on the Board's website.

Sec. 9 amends 10 V.S.A. § 6089, which provides the procedure for appeals. Appeals of jurisdictional opinions and permit decisions go to Board, with fee of \$295. To appeal, must have party status which requires participation at hearings before District Commission. Board shall hold a de novo hearing on the appeal. The hearing shall be in the town or as close as possible to the site at issue in the appeal. Appeal must be filed within 30 days of a decision by District Commission. It adds limits to the types of prehearing discovery that may be used. Prefiled expert witness testimony must follow VT Rules of Civil Procedure. For non-expert witnesses, interrogatories are limited to ID of witness and summary of testimony. Parties may request to enter land at issue. Parties may not use depositions, unless allowed by the Board. Appeals of Board decisions go to the Supreme Court. Appeal to Supreme Court is limited to objections raised below.

Sec. 10 amends 10 V.S.A. § 6007. It gives the Board authority to hear appeals of JOs issued by district Coordinators. Appeals must be filed within 30 days.

Sec. 11 amends 10 V.S.A. § 6083a and establishes \$295 as the filing fee for filing appeals with the ERB.

Sec. 12 amends 10 V.S.A. chapter 220. It removes the Environmental Division's authority to hear Act 250 permit and JO appeals. It strikes the references to Act 250 from the chapter.

Sec. 13 amends the jurisdiction of the Environmental Division to remove its jurisdiction over revoking Act 250 permits because the Board now has the authority.

Sec. 14 appropriates \$300,000 to the ERB for a new staff attorney and the salaries of the 4 new half-time Board members.

Sec. 15 transfers the personnel of the NRB to the ERB.

Sec. 16 gives the Environmental Division the authority to finish work on pending appeals until July 1, 2024.

Sec. 17 asks the new ERB to report to General Assembly on various Act 250 topics including: how to transition to location-based jurisdiction, how to use the Capability and Development Plan, the effectiveness of the current fee structure, and assessment of current staff levels.

Sec. 18 gives revision authority to Leg Counsel to change all of the references to the NRB to the ERB.

Sec. 19 is the effective date section. The bill is effective on passage, except for Secs. 12-13, which are the sections on the authority of the Environmental Division. Those are effective on July 1, 2024, when the Board takes over the appeals.