

H.492

An act relating to the structure of the Natural Resources Board

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

\* \* \* Natural Resources Board \* \* \*

Sec. 1. PURPOSE

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

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

§ 6021. BOARD; VACANCY;<sup>2</sup> REMOVAL

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

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

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

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

(2) ~~The Governor shall appoint up to five persons, with preference given to former Environmental Board, Natural Resources Board, or District~~

~~Commission members, with the advice and consent of the Senate, to serve as alternates for Board members.~~

~~(A) Alternates shall be appointed for terms of four years, with initial appointments being staggered~~ The Environmental Review Board Nominating Committee shall advertise the position when a vacancy will occur on the Environmental Review Board.

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

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

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

If the Governor decides not to reappoint the member, the Nominating Committee shall advertise the vacancy.

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

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

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

fixed by the remaining members of the Board and necessary expenses while on official business.

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

§ 6032. ENVIRONMENTAL REVIEW BOARD NOMINATING  
COMMITTEE

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

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

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

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

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

(c) Terms. The members of the Committee shall serve for terms of two years. Members shall serve until their successors are appointed. Members shall serve not more than three consecutive terms in any capacity. A

legislative member who is appointed as a member of the Committee shall retain the position for the term appointed to the Committee even if the member is subsequently not reelected to the General Assembly during the member's term on the Committee.

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

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

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

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

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

(1) operating procedures of the Committee;

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

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

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

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

(j) Duties.

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

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

the Committee any professional disciplinary action taken or pending concerning the candidate.

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

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

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

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

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

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

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

§ 6025. RULES

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

\* \* \*



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

§ 6027. POWERS

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

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

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

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

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

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

(c) The ~~Natural Resources~~ Board may designate or establish ~~such~~ regional offices as it deems necessary to implement the provisions of this chapter and

the rules adopted ~~hereunder~~. The ~~Natural Resources~~ Board may designate or require a regional planning commission to receive applications, provide administrative assistance, perform investigations, and make recommendations.

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

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

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

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

revocation of land use permits issued under this chapter. Grounds for revocation are:

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

(2) noncompliance with any permit or permit condition;

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

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

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

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

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

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

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

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Sec. 6. 10 V.S.A. § 6022 is amended to read:

§ 6022. PERSONNEL

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

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

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

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

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

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

Sec. 7. 10 V.S.A. § 6084 is amended to read:

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

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

\* \* \*

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

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

§ 6089. APPEALS

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

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

(2) Participation before District Commission. A person shall not appeal an act or decision that was made by a District Commission unless the person was granted party status by the District Commission pursuant to subdivision

6085(c)(1)(E) of this title, participated in the proceedings before the District Commission, and retained party status at the end of the District Commission proceedings. In addition, the person may only appeal those issues under the criteria with respect to which the person was granted party status. However, notwithstanding these limitations, a person may appeal an act or decision of the District Commission if the Board determines that:

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

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

or

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

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

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

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

(6) Prehearing discovery.

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

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

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

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

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



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

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

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

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

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

Environmental Review Board interpreting this act also shall be accorded that deference.

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

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

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

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

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

Sec. 9. 10 V.S.A. § 6007 is amended to read:

§ 6007. ACT 250 DISCLOSURE STATEMENT; JURISDICTIONAL  
DETERMINATION

\* \* \*

(c) With respect to the partition or division of land, or with respect to an activity that might or might not constitute development, any person may submit to the district coordinator an “Act 250 Disclosure Statement” and other information required by the rules of the Board and may request a jurisdictional opinion from the district coordinator concerning the applicability of this chapter. If a requestor wishes a final determination to be rendered on the question, the district coordinator, at the expense of the requestor and in accordance with rules of the Board, shall publish notice of the issuance of the opinion in a local newspaper generally circulating in the area where the land that is the subject of the opinion is located and shall serve the opinion on all persons listed in subdivisions 6085(c)(1)(A) through (D) of this title. In addition, the requestor who is seeking a final determination shall consult with the district coordinator and obtain approval of a subdivision 6085(c)(1)(E) list of persons who shall be notified by the district coordinator because they are adjoining property owners or other persons who would be likely to be able to demonstrate a particularized interest protected by this chapter that may be affected by an act or decision by a District Commission.

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

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

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

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

§ 6083a. ACT 250 FEES

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

\* \* \* Appeals \* \* \*

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

CHAPTER 220. CONSOLIDATED ENVIRONMENTAL APPEALS

§ 8501. PURPOSE

It is the purpose of this chapter to:

- (1) consolidate existing appeal routes for municipal zoning and subdivision decisions and acts or decisions of the Secretary of Natural Resources, ~~district environmental coordinators, and District Commissions,~~ excluding enforcement actions brought pursuant to chapters 201 and 211 of this title and the adoption of rules under 3 V.S.A. chapter 25;
- (2) standardize the appeal periods, the parties who may appeal these acts or decisions, and the ability to stay any act or decision upon appeal, taking into account the nature of the different programs affected;
- (3) ~~encourage people to get involved in the Act 250 permitting process at the initial stages of review by a District Commission by requiring participation as a prerequisite for an appeal of a District Commission decision to the Environmental Division;~~
- (4) ~~assure~~ ensure that clear appeal routes exist for acts and decisions of the Secretary of Natural Resources; and
- (5)(4) consolidate appeals of decisions related to renewable energy generation plants and telecommunications facilities with review under, respectively, 30 V.S.A. §§ 248 and 248a, with appeals and consolidation of proceedings pertaining to telecommunications facilities occurring only while 30 V.S.A. § 248a remains in effect.

§ 8502. DEFINITIONS

As used in this chapter:

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

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

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

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

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

(A) the applicant;

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

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

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

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

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

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

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

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

§ 8503. APPLICABILITY

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

\* \* \*

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

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

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

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

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

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



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

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

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

§ 8504. APPEALS TO THE ENVIRONMENTAL DIVISION

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

\* \* \*

(c) Notice of the filing of an appeal.

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

\* \* \*

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

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

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

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

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

(2) Participation before the Secretary.

\* \* \*

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

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

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

\* \* \*

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

\* \* \*

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

\* \* \*

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

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

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

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

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

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

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

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

(2) is a party by right;

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

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

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

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

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

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

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

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

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

#### § 8505. APPEALS TO THE SUPREME COURT

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

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

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

(3) the Supreme Court determines that:

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

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

\* \* \*

\* \* \* Environmental Division \* \* \*

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

§ 34. JURISDICTION; ENVIRONMENTAL DIVISION

The Environmental Division shall have:

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

and

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

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

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

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

Sec. 13. ENVIRONMENTAL REVIEW BOARD POSITIONS;

APPROPRIATION

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

(1) one Staff Attorney 1; and

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

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

Sec. 14. NATURAL RESOURCES BOARD TRANSITION

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

§ 6021(a)(1)(A) or (B) shall expire on that day.

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

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



Sec. 15. ENVIRONMENTAL DIVISION; CONTINUED JURISDICTION

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

Sec. 16. REPORT; ENVIRONMENTAL REVIEW BOARD

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

(b) The report shall include:

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

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

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

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

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

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

#### Sec. 17. REVISION AUTHORITY

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

\* \* \* Effective Dates \* \* \*

#### Sec. 18. EFFECTIVE DATES

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