

1 H.820
2 Introduced by Representatives Mihaly of Calais, Bartley of Fairfax, Chapin of
3 East Montpelier, and Krasnow of South Burlington
4 Referred to Committee on
5 Date:
6 Subject: Conservation and development; land use; Act 250; appeals;
7 Environmental Division of the Superior Court
8 Statement of purpose of bill as introduced: This bill proposes to transfer the
9 authority of the Environmental Division of the Superior Court to hear appeals
10 and enforcement cases related to State environmental permits to the Land Use
11 Review Board and the Secretary of Natural Resources.

12 An act relating to environmental appeals and enforcement cases

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

14 * * * Environmental Appeals * * *

15 Sec. 1. 10 V.S.A. chapter 220 is amended to read:

16 CHAPTER 220. CONSOLIDATED ENVIRONMENTAL APPEALS

17 § 8501. PURPOSE

18 It is the purpose of this chapter to:

19 * * *

5 * * *

6 § 8502. DEFINITIONS

7 As used in this chapter:

8 * * *

21 * * *

1 (9) “Record” means a good faith compilation of all the materials and
2 testimony presented to, or considered by, a District Commission or appropriate
3 municipal panel that has been appealed to the Board, including the application,
4 recordings of testimony, transcripts, reports, exhibits, plans, schematics,
5 drawings, and any other such information as well as any written materials
6 including memoranda, written communications, responses, reports, and
7 decisions issued by the District Commission or appropriate municipal panel.

8 (10) “Administrative record” means all materials the Agency of Natural
9 Resources relied on or considered or that formed the foundation for its final
10 action and not otherwise exempt from disclosure under the Vermont Public
11 Records Act including the following:

12 (A) all application materials;
13 (B) all staff reports and related documents prepared by the Agency
14 with respect to compliance with substantive and procedural requirements of the
15 relevant statutory and regulatory requirements with respect to the action being
16 appealed, including public notices, inspection reports, correspondence,
17 memoranda, environmental reviews, scientific studies, and compilations of
18 data relied upon by the Agency staff in making recommendations or decisions
19 as well as any decision documents;

20 (C) all written comments, including maps, drawings, schematics, and
21 any exhibits and attachments, provided to the Agency by any person or entity

1 including other federal and State agencies, local governments, regional
2 planning commissions, the applicant, or an entity subject to enforcement
3 relating to the action being appealed; and

6 § 8503. APPLICABILITY

7 * * *

8 (d) This chapter shall govern all appeals from an act or decision of the
9 ~~Environmental Division Land Use Review Board or Secretary~~ under this
10 chapter.

11 * * *

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

1 (b) Agency appeals. Within 30 days following the date of the act or
2 decision, any person aggrieved by an act or decision of the Secretary under the
3 provisions of law listed in section 8503 of this title, or any party by right, may
4 appeal to the Secretary, except for an act or decision of the Secretary under
5 subdivision 6086b(3)(E) of this title or governed by section 8506 of this title.
6 At the request of the Secretary, the Board shall assign agency appeals to a
7 hearing officer who shall conduct the hearing on behalf of, or alongside, the
8 Secretary.

9 ~~(b)~~(c) Planning and zoning chapter appeals.

10 (1) Within 30 days ~~of following~~ the date of the act or decision, an
11 interested person, as defined in 24 V.S.A. § 4465, or a person aggrieved
12 owning or occupying property in the immediate neighborhood of a property
13 that is the subject of the decision or act, who has participated as defined in 24
14 V.S.A. § 4471 in the municipal regulatory proceeding under that chapter may
15 appeal to the Environmental Division Board an act or decision made under that
16 chapter by a board of adjustment, a planning commission, or a development
17 review board; provided, however, that decisions of a development review
18 board under 24 V.S.A. § 4420 with respect to local Act 250 review of
19 municipal impacts are not subject to appeal but shall serve as presumptions
20 under chapter 151 of this title.

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

10 (e)(d) Notice of the filing of an appeal.

* * *

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

19 (i) To be sufficient for the purpose of appeal, a comment to the
20 Secretary shall identify each reasonably ascertainable issue with enough
21 particularity so that a meaningful response can be provided.

1 (ii) The appellant shall identify each comment that the appellant
2 submitted to the Secretary that identifies or relates to an issue raised in his or
3 her appeal.

4 (iii) A person moving to dismiss an appeal or an issue raised by an
5 appeal pursuant to this subdivision (A) shall have the burden to prove that the
6 requirements of this subdivision (A) are not satisfied.

10 (i) there was a procedural defect that prevented the person from
11 commenting during the comment period or at the public meeting or otherwise
12 participating in the proceeding;

15 (iii) the person demonstrates that an issue was not reasonably
16 ascertainable during the review of an application or other request that led to the
17 Secretary's act or decision; or

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

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

1 ~~(f)~~(g) Stays.

2 (1) The filing of an appeal shall automatically stay the act or decision in
3 the following situations:

4 (A) acts or decisions involving stream alteration permits or shoreline
5 encroachment permits issued by the Secretary; or
6 (B) the denial of interested person status by a board of adjustment,
7 planning commission, or development review board.

8 (2) Upon petition by a party or upon its own motion for a stay of an act
9 or decision, the Environmental Division Board shall perform the initial review
10 of the request and may grant a stay. Any decision under this subsection to
11 issue a stay shall be subject to appeal to the Supreme Court according to the
12 Rules of Appellate Procedure.

13 ~~(g)~~(h) Consolidated appeals. The Environmental Division Board may
14 consolidate or coordinate different appeals, in accordance with section 6035 of
15 this title, where those appeals all relate to the same project, including appeals
16 of permits from the Secretary, with the Secretary's agreement.

17 ~~(h) De novo hearing. The Environmental Division, applying the~~
18 ~~substantive standards that were applicable before the tribunal appealed from,~~
19 ~~shall hold a de novo hearing on those issues that have been appealed, except in~~
20 ~~the case of:~~

1 (1) a decision being appealed on the record pursuant to 24 V.S.A.

2 chapter 117;

3 (2) a decision of the Commissioner of Forests, Parks and Recreation

4 under section 2625 of this title being appealed on the record, in which case the

5 court shall affirm the decision, unless it finds that the Commissioner did not

6 have reasonable grounds on which to base the decision.

11 * * *

12 (k) Limitations on appeals. Notwithstanding any other provision of this
13 section:

15 (m) Precedent. Prior decisions of the Environmental Division of the
16 Superior Court, Environmental Board, Water Resources Board, and Waste
17 Facilities Panel shall be given the same weight and consideration as prior
18 decisions of the Environmental Division Land Use Review Board.

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

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

5 (q) Amicus curiae. Notwithstanding the hearing of an appeal as de novo,
6 any judge the Board presiding over appeals from chapter 151 of this title and
7 Agency permits pursuant to subsection (a) (b) of this section may allow
8 participation in such appeals by amicus curiae following the Rules of Appellate
9 Procedure Rule 29.

10 § 8505. APPEALS TO THE SUPREME COURT

11 (a) Any person aggrieved by a decision of the Environmental Division
12 Board or Secretary pursuant to this subchapter, or any party by right, or the
13 Board may, in accordance with 3 V.S.A. § 815, appeal to the Supreme Court
14 within 30 days of following the date of the entry of the order or judgment
15 appealed from, provided that:

16 (1) the person was a party to the proceeding before the Environmental
17 Division Board or Secretary; or

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

19 (3) the Supreme Court determines that:

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

3 (b) An objection that has not been raised before the Environmental
4 Division Board or Secretary may not be considered by the Supreme Court,
5 unless the failure or neglect to raise that objection is excused by the Supreme
6 Court because of extraordinary circumstances.

9 * * *

10 § 8507. CONDUCT OF APPEALS TO THE BOARD OR THE
11 SECRETARY

12 (a) The Land Use Review Board's and the Secretary's process of review
13 will depend on whether the matter is simple or complex. The Board or hearing
14 officer, if assigned to a matter, shall make a determination of whether the
15 matter before the Board is simple or complex.

16 (1) Factors that may be considered to determine whether an appeal is
17 simple or complex include:

1 (E) legal complexity; or

2 (F) other factors relevant under the circumstances.

3 (2) If the parties agree to simple review, the Board shall adjudicate the
4 matter under simple review.

5 (b) For complex matters, the full Board or the Secretary shall adjudicate the
6 appeal and at its discretion may assign to a hearing officer some or all of the
7 adjudication process. Parties to a complex appeal may initiate motion practice,
8 which shall be limited to dispositive motions only. The assigned hearing
9 officer shall hold an evidentiary hearing and subsequently issue a
10 recommendation and draft order; alternatively, the Board or Secretary may sit
11 in directly on the initial hearing alongside the hearing officer, at its discretion.
12 Subsequently, the full Board or Secretary shall have the discretion to either
13 hear the appeal directly in a formal, noticed hearing, or to rule on the
14 recommendation of the hearing officer.

15 (1) The Board and Secretary shall have the authority to accept testimony
16 in the form of prefilled written testimony, and written rebuttal testimony. At
17 the request of the parties, the Board and Secretary may accept live testimony or
18 cross-examination based upon a showing that it will not delay the hearing, is
19 more efficient, or would not unfairly disadvantage any party.

1 (2) Parties in complex appeals may be provided the limited opportunity
2 to supplement the record, including through filed or live testimony subject to
3 an opportunity for cross-examination.

4 (c) Notwithstanding 3 V.S.A. chapter 25, for simple matters, the
5 adjudication of the appeal can be decided by the Board or Secretary on a
6 consent agenda. Proceedings on simple matters shall not involve discovery or
7 motion practice. The recommendation and draft order of the hearing officer
8 shall be considered by the Board, which shall rule on the recommendation of
9 the hearing officer.

10 (d) In all proceedings, discovery shall be limited to that which is necessary
11 to supplement the record, pursuant to this subchapter.

12 (e) The Board or Secretary shall have the authority to limit the motion
13 practice to the needs of the case, in the interest of promoting efficient and
14 expedient resolution of the matter.

15 Sec. 2. 3 V.S.A. § 2825 is amended to read:

16 § 2825. DUTIES OF THE SECRETARY

17 * * *

18 (f) The Secretary shall have authority to decide appeals of permit decisions
19 made by the Secretary pursuant to the requirements and procedures established
20 in 10 V.S.A. chapters 220 and 151.

1 * * * Land Use Review Board * * *

2 Sec. 3. 10 V.S.A. § 6021 is amended to read:

3 § 6021. BOARD; VACANCY; REMOVAL

4 (a) Board established. The Land Use Review Board is created.

5 (1) The Board shall consist of ~~five~~ three members appointed by the

6 Governor after review and approval by the Land Use Review Board

7 Nominating Committee in accordance with subdivision (2) of this subsection

8 and confirmed with the advice and consent of the Senate, so that one

9 appointment expires in each year. The Chair and the other ~~four~~ two members

shall be full-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 one or more of the following areas:

13 environmental science: land use law, policy, planning, and development

14 community planning. All candidates shall have a commitment to

15 environmental justice

16 (A) The Government

17 shall be a full-time position. The Governor shall ensure Board membership

¹⁸ See *note 17* above. It is possible that the original author of the *Prologue* had in mind

¹⁸ See also the discussion of the Götter. The Pausanias hall contains a copy of the original.

9 * * *

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

15 (b) Terms; vacancy; succession. The term of each appointment subsequent
16 to the initial appointments described in subsection (a) of this section shall be
17 ~~five~~ six years. Any appointment to fill a vacancy shall be for the unexpired
18 portion of the term vacated. A member may seek reappointment by informing
19 the Governor. If the Governor decides not to reappoint the member, the
20 Nominating Committee shall advertise the vacancy.

5 * * *

6 Sec. 4. LAND USE REVIEW BOARD MEMBER APPOINTMENTS

7 The Governor shall appoint the members of the Land Use Review Board on
8 or before January 1, 2027, and the terms of any Land Use Review Board
9 members not appointed consistent with the requirements of 10 V.S.A.
10 § 6021(a)(1)(A) or (B) shall expire on that day. Current members of the Board
11 may apply to remain a member of the Board.

12 Sec. 5. 10 V.S.A. § 6027a is added to read:

13 § 6027a. HEARINGS AND HEARING OFFICERS

14 (a) When a matter comes before the Board, the Board shall have the
15 authority to appoint a hearing officer for that matter at its discretion. Board
16 members may sit as hearing officers in a matter.

17 (b) Hearing officers shall have the authority to hold any hearing in any
18 matter within the Board's jurisdiction. Hearings shall be conducted in an
19 impartial manner and as contested cases

20 (c) At the request of the Secretary, a hearing officer, applying the
21 provisions of this chapter, shall conduct hearings of Agency of Natural

1 Resources decisions on behalf of the Secretary and may, at the Secretary's
2 request, coordinate the appeal with related appeals of a decision by a District
3 Commission or by an appropriate municipal panel.

4 (d) The hearing officer shall set a date, time, and place for a scheduling
5 conference within 30 days following when the Board receives the record.

6 Written notice of the time and place for the hearing shall be served on the
7 parties. Service of the notice of hearing shall be made at least 14 calendar days
8 prior to the date of the conference.

9 (e) The hearing officer shall, within the hearing officer's discretion, seek to
10 ensure that a hearing provides a forum for nonlawyers to present their case
11 adequately and without prejudice.

12 (f) The hearing officer shall have the authority and discretion to:

13 (1) Administer oaths in all cases, provided this power is properly
14 incidental to the performance of the officer's duty or that of the Board.

15 (2) Sign and issue subpoenas in the name of the Board, at the request of
16 any party, requiring attendance and giving of testimony by witnesses and the
17 production of books, papers, documents, and other evidence, and said
18 subpoenas shall be regulated by the civil practice law and rules. Nothing
19 herein contained shall affect the authority of an attorney for a party to issue
20 such subpoenas under the provisions of the civil practice law and rules.

1 (3) Regulate the course of the hearings, set the time and place for
2 continued hearings, and fix the time for filing of briefs and other documents.

3 (4) Direct the parties to appear and confer to consider the simplification
4 of the issues by consent of the parties.

5 (5) Issue proposals for decision to be presented to the Board or
6 Secretary in accordance with 3 V.S.A. § 811.

7 (6) Ensure a complete administrative record is consolidated and
8 presented before the Board or Secretary, also ensuring that such record is
9 suitable for appeal to the Supreme Court.

10 (g) The Board may assign a hearing officer to conduct or assist in
11 mediation. A hearing officer who participates in mediation shall be
12 disqualified from any further role in that matter.

13 Sec. 6. 10 V.S.A. § 6035 is added to read:

14 § 6035. JURISDICTION OF THE LAND USE REVIEW BOARD

15 (a)(1) Beginning on July 1, 2027, the Land Use Review Board shall assume
16 jurisdiction over appeals from acts or decisions under this chapter from the
17 Environmental Division of the Superior Court.

18 (2) Beginning on July 1, 2028, the Land Use Review Board shall
19 assume jurisdiction over municipal zoning permit appeals under 24 V.S.A.
20 §§ 4465 and 4471 from the Environmental Division of the Superior Court.

1 (3) Beginning on July 1, 2028, the Secretary shall assume jurisdiction
2 over appeals from permit, license, certification, and enforcement actions by the
3 Agency of Natural Resources from the Environmental Division of the Superior
4 Court.

5 (b) Applicants for permits under this chapter or Agency of Natural
6 Resources permits that are also undergoing municipal zoning permit appeals
7 under 24 V.S.A. § 4465 or 4471 for the same project shall have the option to
8 have their appeals consolidated or coordinated at the Board. At the Board's
9 discretion, the Board may approve or deny the proposed consolidation or
10 coordination of municipal and Act 250 appeals for the same project, dependent
11 on whether:

12 (1) the consolidation or coordination of the appeals would expedite the
13 processing and resolution of the matters;

14 (2) the two matters to be consolidated or coordinated deal with
15 substantially similar factual and legal issues;

16 (3) the consolidation or coordination would not adversely affect the
17 interests of the parties; and

18 (4) the two matters to be consolidated or coordinated are not at
19 significantly different procedural postures.

20 Sec. 7. 10 V.S.A. § 6036 is added to read:

21 § 6036. SCOPE AND STANDARD OF REVIEW

1 (a) When reviewing matters appealed from District Commissions,
2 appropriate municipal panels, or the Agency, the Board or Secretary shall
3 consider only the record before it, except where supplementation of the record
4 is permitted pursuant to this subchapter.

5 (b) The Board or Secretary shall review legal conclusions and mixed
6 questions of law and fact reached by a District Commission, appropriate
7 municipal panel, or the Agency de novo. The Board may reverse or modify
8 the factual findings of the decision on appeal only when they are not supported
9 by substantial evidence in the record.

10 (c) The Board shall review jurisdictional opinions issued by district
11 coordinators de novo.

12 Sec. 8. 10 V.S.A. § 6037 is added to read:

13 § 6037. SUPPLEMENTATION OF THE RECORD

14 (a) If, before the date set for a hearing, application is made to the Board or
15 Secretary for leave to present additional evidence, and it is shown to the
16 satisfaction of the Board or Secretary that the additional evidence is material
17 and that there was just cause for failure to present it in the proceeding before
18 the District Commission, Agency, or appropriate municipal panel, the Board or
19 Secretary may order that the additional evidence be taken. The Board or
20 Secretary may modify their findings and decisions by reason of the additional
21 evidence and shall file that evidence and any modifications, new findings, or

1 decisions with the Board. The Board or Secretary is authorized to exclude
2 irrelevant, immaterial, or unduly repetitious evidence.

11 Sec. 9. 10 V.S.A. § 6025 is amended to read:

12 § 6025. RULES

18 * * *

19 (d) On or before January 1, 2027, the Board and the Secretary shall adopt
20 rules of procedure that govern appeals and other contested cases before it that
21 are consistent with this chapter. The rules may include the Board's use of

1 hearing officers. The Board and Secretary shall coordinate the development of
2 these procedures.

3 Sec. 10. 10 V.S.A. § 6027(h) is amended to read:

4 (h) The Board ~~may~~ shall hear:

5 (1) all appeals from an act or decision of a District Commission under
6 this chapter, including fee refund requests under section 6083a of this title;

7 (2) appeals from an act or decision of a district coordinator under
8 subsection 6007(d) of this chapter; and

9 (3) appeals from an act or decision by an appropriate municipal panel or
10 zoning administrator under 24 V.S.A. chapter 117.

11 Sec. 11. 10 V.S.A. § 6086(f) is amended to read:

12 (f) Prior to any appeal of a permit issued by a District Commission, any
13 aggrieved party may file a request for a stay of construction with the District
14 Commission together with a declaration of intent to appeal the permit. The
15 stay request shall be automatically granted for 14 days upon receipt and notice
16 to all parties and pending a ruling on the merits of the stay request pursuant to
17 Board rules. The automatic stay shall not extend beyond the 30-day appeal
18 period unless a valid appeal has been filed with the ~~Environmental Division~~
19 Board. The automatic stay may be granted only once under this subsection
20 during the 30-day appeal period. Following appeal of the District Commission
21 decision, any stay request must be filed with the ~~Environmental Division~~

1 pursuant to the provisions of chapter 220 of this title Board. A District
2 Commission shall not stay construction authorized by a permit processed under
3 the Board's minor application procedures.

4 Sec. 12. 10 V.S.A. § 6083a is amended to read:

5 § 6083a. ACT 250 FEES

6 * * *

7 (k) All persons filing an appeal, cross appeal, or petition from a District
8 Commission decision or jurisdictional opinion shall pay a fee of \$295.00, plus
9 publication costs, unless the Board approves a waiver of fees based on
10 indigency.

11 Sec. 13. 10 V.S.A. § 6029 is amended to read:

12 § 6029. ACT 250 PERMIT FUND

13 There is hereby established a special fund to be known as the Act 250
14 Permit Fund for the purposes of implementing the provisions of this chapter
15 and chapter 220 of this title. Revenues to the fund shall be those fees collected
16 in accordance with section 6083a of this title, gifts, appropriations, and
17 copying and distribution fees. Revenues to the fund shall also include those
18 fees and costs collected under chapter 220 of this title. The Board shall be
19 responsible for the Fund and shall account for revenues and expenditures of the
20 Board. At the Commissioner's discretion, the Commissioner of Finance and
21 Management may anticipate amounts to be collected and may issue warrants

1 based thereon for the purposes of this section. Disbursements from the Fund
2 shall be made through the annual appropriations process to the Board and to
3 the Agency of Natural Resources to support those programs within the Agency
4 that directly or indirectly assist in the review of Act 250 applications. This
5 Fund shall be administered as provided in 32 V.S.A. chapter 7, subchapter 5.

6 * * * Municipal Zoning * * *

7 Sec. 14. 24 V.S.A. § 4465 is amended to read:

8 § 4465. APPEALS OF DECISIONS OF THE ADMINISTRATIVE OFFICER

9 (a) An interested person may appeal any decision or act taken by the
10 administrative officer in any municipality by filing a notice of appeal with the
11 secretary of the board of adjustment or development review board of that
12 municipality or with the clerk of that municipality if no such secretary has been
13 elected. This notice of appeal must be filed within 15 days following the date
14 of that decision or act, and a copy of the notice of appeal shall be filed with the
15 administrative officer.

16 (b) As used in this chapter, an “interested person” means any one of the
17 following:

18 * * *

19 (4) Any 20 persons who may be any combination of voters, residents, or
20 real property owners within a municipality listed in subdivision (2) of this
21 subsection who, by signed petition to the appropriate municipal panel of a

1 ~~municipality, the plan or a bylaw of which is at issue in any appeal brought~~
2 ~~under this title, allege that any relief requested by a person under this title, if~~
3 ~~granted, will not be in accord with the policies, purposes, or terms of the plan~~
4 ~~or bylaw of that municipality. This petition to the appropriate municipal panel~~
5 ~~must designate one person to serve as the representative of the petitioners~~
6 ~~regarding all matters related to the appeal. For purposes of this subdivision, an~~
7 ~~appeal shall not include the character of the area affected if the project has a~~
8 ~~residential component that includes affordable housing.~~

9 (5) Any department and administrative subdivision of this State owning
10 property or any interest in property within a municipality listed in subdivision
11 (2) of this subsection, and the Agency of Commerce and Community
12 Development of this State.

13 * * *

14 Sec. 15. 24 V.S.A. § 4471 is amended to read:

15 § 4471. APPEAL TO ENVIRONMENTAL DIVISION LAND USE

16 REVIEW BOARD

17 (a) Participation required. An interested person who has participated in a
18 municipal regulatory proceeding authorized under this title may appeal a
19 decision rendered in that proceeding by an appropriate municipal panel to the
20 Environmental Division Land Use Review Board. Participation in a local
21 regulatory proceeding shall consist of offering, through oral or written

1 testimony, evidence or a statement of concern related to the subject of the
2 proceeding. An appeal from a decision of the appropriate municipal panel, or
3 from a decision of the municipal legislative body under subsection 4415(d) of
4 this title, shall be taken in such manner as the Supreme Court may by rule
5 provide for appeals from State agencies governed by 3 V.S.A. §§ 801–816,
6 unless the decision is an appropriate municipal panel decision ~~which~~ that the
7 municipality has elected to be subject to review on the record.

8 (b) Appeal on the record. If the municipal legislative body has determined
9 (or been instructed by the voters) to provide that appeals of certain appropriate
10 municipal panel determinations shall be on the record, has defined what
11 magnitude or nature of development proposal shall be subject to the production
12 of an adequate record by the panel, and has provided that the Municipal
13 Administrative Procedure Act shall apply in these instances, then an appeal
14 from such a decision of an appropriate municipal panel shall be taken on the
15 record in accordance with the Vermont Rules of Civil Procedure.

16 (c) Notice. Notice of the appeal shall be filed by certified mailing, with
17 fees, to the ~~Environmental Division~~ Board and by mailing a copy to the
18 municipal clerk or the administrative officer, if so designated, who shall supply
19 a list of interested persons to the appellant within five working days. Upon
20 receipt of the list of interested persons, the appellant shall, by certified mail,
21 provide a copy of the notice of appeal to every interested person, and, if any

1 one or more of those persons are not then parties to the appeal, upon motion
2 they shall be granted leave by the Division Board to intervene.

3 (d) Local Act 250 review. Notwithstanding the provisions of subsection (a)
4 of this section, decisions of a development review board under section 4420 of
5 this title, with respect to local Act 250 review of municipal impacts, are not
6 subject to appeal, but shall serve as presumptions under the provisions of 10
7 V.S.A. chapter 151.

8 (e) Designated areas. Notwithstanding subsection (a) of this section, a
9 determination by an appropriate municipal panel that a residential development
10 will not result in an undue adverse effect on the character of the area affected
11 shall not be subject to appeal if the a proposed residential development seeking
12 conditional use approval under subdivision 4414(3) of this title is within a
13 designated downtown development district, designated growth center, or
14 designated neighborhood development area. Other elements of the
15 determination made by the appropriate municipal panel may be appealed.

16 Sec. 16. 24 V.S.A. § 4472 is amended to read:

17 § 4472. EXCLUSIVITY OF REMEDY; FINALITY

18 (a) Except as provided in ~~subsections (b) and subsection~~ (c) of this section,
19 the exclusive remedy of an interested person with respect to any decision or act
20 taken, or any failure to act, under this chapter or with respect to any one or
21 more of the provisions of any plan or bylaw shall be the appeal to the

1 appropriate panel under section 4465 of this title, and the appeal to the
2 Environmental Division Land Use Review Board from an adverse decision
3 upon such appeal under section 4471 of this title. The appeal to the
4 Environmental Division Land Use Review Board, if not on the record, as
5 allowed under section 4471 of this title, shall be governed by the Vermont
6 Rules of Civil Procedure and such interested person shall be entitled to a ~~de~~
7 ~~novo trial in the Environmental Division Board's rules. If the appeal to the~~
8 ~~Environmental Division is on the record, according to the provisions of section~~
9 ~~4471 of this title, it shall be governed by the Vermont Rules of Civil~~
10 ~~Procedure. Whether proceeding on the record or de novo, the court shall have~~
11 ~~and may exercise all powers and authorities of a Superior Court.~~

12 (b) ~~The remedy of an interested person with respect to the constitutionality~~
13 ~~of any one or more of the provisions of any bylaw or municipal plan shall be~~
14 ~~governed by the Vermont Rules of Civil Procedure with a de novo trial in the~~
15 ~~Superior Court, unless the issue arises in the context of another case under this~~
16 ~~chapter, in which instance it may be raised in the Environmental Division. In~~
17 ~~such cases, hearings before the appropriate municipal panel shall not be~~
18 ~~required. This section shall not limit the authority of the Attorney General to~~
19 ~~bring an action before the Environmental Division under section 4453 of this~~
20 ~~title, with respect to challenges to housing provisions in bylaws. [Repealed.]~~

4 (d) Upon the failure of any interested person to appeal to an appropriate
5 municipal panel under section 4465 of this title, or to appeal to the
6 Environmental Division Board under section 4471 of this title, all interested
7 persons affected shall be bound by that decision or act of that officer, the
8 provisions, or the decisions of the panel, as the case may be, and shall not
9 thereafter contest, either directly or indirectly, the decision or act, provision, or
10 decision of the panel in any proceeding, including any proceeding brought to
11 enforce this chapter.

12 Sec. 17. 24 V.S.A. § 4453 is amended to read:

§ 4453. CHALLENGES TO HOUSING PROVISIONS IN BYLAWS

14 The Attorney General or a designee shall investigate when there is a
15 complaint that a bylaw or its manner of administration violates subdivision
16 4412(1) of this title, relating to equal treatment of housing and adequate
17 provision of affordable housing. Upon determining that a violation has
18 occurred, the Attorney General may file an action in the Environmental Civil
19 Division to challenge the validity of the bylaw or its manner of administration.
20 In this action, the municipality shall have the burden of proof to establish by a
21 preponderance of the evidence that the challenged bylaw or its manner of

1 administration does not violate the provisions of subdivision 4412(1) of this
2 title. If the Division finds the bylaw or its administration to be in violation, it
3 shall grant the municipality a reasonable period of time to correct the violation
4 and may extend that time. If the violation continues after that time, the
5 Division shall order the municipality to grant all requested permits and
6 certificates of occupancy for housing relating to the area of continuing
7 violation.

8 Sec. 18. 24 V.S.A. § 4449 is amended to read:

9 § 4449. ZONING PERMIT, CERTIFICATE OF OCCUPANCY, AND
10 MUNICIPAL LAND USE PERMIT

11 (a) Within any municipality in which any bylaws have been adopted:

12 * * *

13 (3) No permit issued pursuant to this section shall take effect until the
14 time for appeal in section 4465 of this title has passed, or in the event that a
15 notice of appeal is properly filed, no such permit shall take effect until
16 adjudication of that appeal by the appropriate municipal panel is complete and
17 the time for taking an appeal to the Environmental Division Land Use Review
18 Board has passed without an appeal being taken. If an appeal is taken to the
19 Environmental Division Board, the permit shall not take effect until the
20 Environmental Division Board rules in accordance with 10 V.S.A. § 8504 on

1 whether to issue a stay, or until the expiration of 15 days, whichever comes
2 first.

3 * * *

4 Sec. 19. 24 V.S.A. § 4452 is amended to read:

5 § 4452. ENFORCEMENT; REMEDIES

If any street, building, structure, or land is or is proposed to be erected, constructed, reconstructed, altered, converted, maintained, or used in violation of any bylaw adopted under this chapter, the administrative officer shall institute in the name of the municipality any appropriate action, injunction, or other proceeding to prevent, restrain, correct, or abate that construction or use, or to prevent, in or about those premises, any act, conduct, business, or use constituting a violation. ~~A court~~ An action under this section may be initiated ~~in~~ before the ~~Environmental Division~~ Land Use Review Board, or as appropriate, before the Judicial Bureau, as provided under section 1974a of this title.

16 Sec. 20. 24 V.S.A. § 4455 is amended to read:

17 § 4455. REVOCATION

18 On petition by the municipality and after notice and opportunity for hearing,
19 the Environmental Division Land Use Review Board may revoke a municipal
20 land use permit issued under this chapter, including a permit for a
21 telecommunications facility, on a determination that the permittee violated the

1 terms of the permit or obtained the permit based on misrepresentation of
2 material fact.

3 Sec. 21. 24 V.S.A. § 4469 is amended to read:

4 § 4469. APPEAL; VARIANCES

5 (a) On an appeal under section 4465 or 4471 of this title or on a referral
6 under subsection 4460(e) of this title in which a variance from the provisions
7 of a bylaw or interim bylaw is requested for a structure that is not primarily a
8 renewable energy resource structure, the board of adjustment or the
9 development review board or the ~~Environmental Division created under 4~~
10 ~~V.S.A. chapter 27~~ Land Use Review Board shall grant variances and render a
11 decision in favor of the appellant, if all the following facts are found, and the
12 finding is specified in its decision:

13 * * *

14 (b) On an appeal under section 4465 or 4471 of this title in which a
15 variance from the provisions of a bylaw or interim bylaw is requested for a
16 structure that is primarily a renewable energy resource structure, the board of
17 adjustment or development review board or the ~~Environmental Division Land~~
18 Use Review Board may grant that variance and render a decision in favor of
19 the appellant if all the following facts are found, and the finding is specified in
20 its decision:

21 * * *

6 * * *

7 Sec. 22. 24 V.S.A. § 4470 is amended to read:

10 * * *

17 Sec. 23. 24 V.S.A. § 2283 is amended to read:

18 § 2283. APPEALS

19 After exhausting the right of administrative appeal to the Board under
20 19 V.S.A. § 5(d)(5), a person aggrieved by any order, act, or decision of the
21 Agency of Transportation may appeal to the Superior Court, and all

1 proceedings shall be de novo. Any person, including the Agency of
2 Transportation, may appeal to the Supreme Court from a judgment or ruling of
3 the Superior Court. Appeals of acts or decisions of the Secretary of Natural
4 Resources or a legislative body of a municipality under this subchapter shall be
5 appealed to the ~~Environmental Division~~ Land Use Review Board under
6 10 V.S.A. § 8503.

7 * * * Superior Court * * *

8 Sec. 24. REPEALS

9 4 V.S.A. § 34 (Jurisdiction; Environmental Division) and 4 V.S.A. § 1001
10 (Environmental Division) are repealed.

11 Sec. 25. 4 V.S.A. § 30 is amended to read:

12 § 30. SUPERIOR COURT

13 (a)(1) A Superior Court having statewide jurisdiction is created. The
14 Superior Court shall have the following divisions:

15 * * *

16 (D) ~~An Environmental Division, which shall be a court of record and~~
17 ~~have jurisdiction over the matters described in section 34 of this title. The~~
18 ~~Vermont Rules for Environmental Proceedings shall apply in the~~
19 ~~Environmental Division.~~ [Repealed.]

20 * * *

1 Sec. 26. 4 V.S.A. § 21a is amended to read:

2 § 21a. DUTIES OF THE CHIEF SUPERIOR JUDGE

3 (a) The Chief Superior Judge shall assign and specially assign Superior
4 judges, including themselves, ~~and Environmental judges~~ to the Superior Court.

5 All Superior judges ~~except Environmental judges~~ shall be subject to the
6 requirements of rotation as ordered by the Supreme Court. Assignments made
7 pursuant to the rotation schedule shall be subject to the approval of the
8 Supreme Court.

9 (b) In making any assignment under this section, the Chief Superior Judge
10 shall give consideration to the experience, temperament, and training of a
11 judge and the needs of the court. ~~In making an assignment to the~~
12 ~~Environmental Division, the Chief Superior Judge shall give consideration to~~
13 ~~experience and expertise in environmental and land use law and shall assign or~~
14 ~~specially assign judges in a manner to provide appropriate attention to all~~
15 ~~geographic areas of the State.~~

16 (c) ~~In making any assignments to the Environmental Division under this~~
17 ~~section, the Chief Superior Judge shall regularly assign two judges, at least one~~
18 ~~of whom shall be an Environmental judge. An Environmental judge may be~~
19 ~~assigned to other divisions in the Superior Court for a period of time not~~
20 ~~exceeding two years. When assigned to other divisions in the Superior Court,~~

1 the Environmental judge shall have all the powers and responsibilities of a
2 Superior judge. [Repealed.]

3 Sec. 27. 4 V.S.A. § 36 is amended to read:

4 § 36. COMPOSITION OF THE COURT

5 (a) Composition of the court. Unless otherwise specified by law, when in
6 session, a Superior Court shall consist of:

7 * * *

8 (5) ~~For cases in the Environmental Division, one Environmental judge~~
9 ~~sitting alone.~~ [Repealed.]

10 * * * Enforcement * * *

11 Sec. 28. 10 V.S.A. chapter 201 is amended to read:

12 CHAPTER 201. ADMINISTRATIVE ENVIRONMENTAL LAW
13 ENFORCEMENT

14 * * *

15 § 8002. DEFINITIONS

16 As used in this chapter:

17 * * *

18 (12) ~~“Environmental Court” or “Environmental Division” means the~~
19 ~~Environmental Division of the Superior Court established by 4 V.S.A. § 30.~~
20 [Repealed.]

21 * * *

1 § 8004. ENFORCEMENT OF ACT 250

2 In addition to the enforcement of chapter 151 of this title on the Secretary's
3 initiative, the Secretary shall institute enforcement proceedings under chapter
4 151 when requested by the ~~Natural Resources~~ Land Use Review Board. The
5 Secretary and the Land Use Review Board shall develop procedures for the
6 cooperative enforcement of chapter 151 of this title.

7 * * *

8 § 8007. ASSURANCES OF DISCONTINUANCE

13 * * *

14 (c) An assurance of discontinuance shall be in writing and signed by the
15 respondent and shall specify the statute or regulation alleged to have been
16 violated. The assurance of discontinuance shall be simultaneously filed with
17 the Attorney General ~~and the Environmental Division~~. The Secretary or the
18 Land Use Review Board shall post a final draft assurance of discontinuance to
19 its website and shall provide a final draft assurance of discontinuance to a
20 person upon request. ~~When signed by the Environmental Division, the~~
21 ~~assurance shall become a judicial order~~. Upon motion by the Attorney General

1 made within 14 days after the date the assurance is signed by the ~~Division~~
2 ~~Board~~ and upon a finding that the order is insufficient to carry out the purposes
3 of this chapter, the ~~Division~~ Board shall vacate the order.

4 * * *

5 § 8008. ADMINISTRATIVE ORDERS

6 * * *

7 (b) An order shall include:

8 * * *

9 (6) a statement that unless the respondent requests a hearing under this
10 section, the order ~~becomes~~ shall have the effect of a judicial order when filed
11 with and signed by the ~~Environmental~~ Division Board or Secretary.

12 * * *

13 (d)(1) The administrative order and proof of service shall be
14 simultaneously filed with the Attorney General and the ~~Environmental~~
15 ~~Division~~ Board. The Division shall sign the administrative order in the event
16 that:

17 (A) the administrative order is properly served on a respondent in
18 accordance with subsection (a) of this section;

19 (B) the respondent does not request a hearing in accordance with
20 subsection (b) of this section; and

21 (C) the order otherwise meets the requirements of this chapter.

7 * * *

8 § 8009. EMERGENCY ADMINISTRATIVE ORDERS; REQUEST FOR
9 HEARING

10 * * *

11 (b) Prerequisites to issuance. An emergency administrative order may be
12 issued only if:

13 (1) the order has been presented to the Environmental Division Board;

14 (2) all reasonable efforts have been made to notify the respondent of the

15 presentation of the order to the Environmental Division Board; and

16 (3) the Environmental Division Board has found that the agency issuing

17 the order has made a sufficient showing that grounds for issuance of the order

18 exist.

19 * * *

20 (d) Request for hearing. If an emergency order is issued, the respondent
21 may request a hearing before the ~~Environmental Division~~ Board. Notice of the

1 request for hearing shall be filed with the ~~Environmental Division~~ Board and
2 the agency issuing the order within five business days of following receipt of
3 the order. A hearing on the emergency order shall be held at the earliest
4 possible time and shall take precedence over all other hearings. The hearing
5 shall be held within five business days of following receipt of the notice of the
6 request for hearing. A request for hearing on an emergency order shall not stay
7 the order. The ~~Environmental Division~~ Board shall issue a decision within five
8 business days from the conclusion of the hearing and no later than 30 days
9 from the date the notice of request for hearing was received.

10 * * *

11 § 8012. REQUEST FOR HEARING

12 (a) A respondent or the Attorney General may request a hearing on an order
13 issued by the Secretary. Notice of a request for hearing shall be filed with the
14 ~~Environmental Division~~ Board and the Secretary. Upon receipt of the notice,
15 the Secretary shall forward a copy of the order to the ~~Environmental Division~~
16 Board.

17 (b) The ~~Environmental Division~~ Board shall have authority to:

18 (1) Determine whether a violation has occurred. An order shall be
19 reversed when it is determined that a violation has not occurred.

20 (2) Affirm or vacate and remand to the Secretary an order issued under
21 subdivision 8008(b)(5) of this title. The ~~Environmental Division~~ Board shall

1 vacate and remand an order under this subdivision when a violation is found to
2 exist but the procedure contained in the order is insufficient to carry out the
3 purposes of this chapter.

4 (3) Affirm, modify, or reverse any provision of any order issued by the
5 Secretary except those identified by subdivision (2) of this subsection. In
6 deciding whether to affirm or reverse a stop work order under this subdivision,
7 the Environmental Division Board shall consider the economic effect of the
8 order on individuals other than the respondent.

9 * * *

10 (c) Notice of the request for hearing shall be filed within 15 days of
11 following receipt of the order. The hearing shall be held before the
12 Environmental Division Board within 30 days of following receipt by the
13 Division Board of the notice, unless continued for good cause. The
14 Environmental Division Board shall issue a written decision within 20 days of
15 following the conclusion of the hearing, and no later than 60 days from the
16 request for hearing, unless the hearing process is extended for good cause. The
17 decision shall be sent to the parties by certified mail, return receipt requested,
18 and shall include:

19 * * *

20 § 8013. CONDUCT OF HEARINGS; APPEAL; STAY

21 * * *

1 (b) Parties may be represented by counsel in hearings before the
2 ~~Environmental Division Board~~. The Agency of Natural Resources or the
3 ~~Board~~ each may represent itself. A party may conduct cross-examination
4 required for a full and true disclosure of the facts.

5 (c) An appeal from a decision of the Environmental Division Board may be
6 taken by ~~the Secretary, the Board, or~~ the respondent to the Supreme Court.
7 The Attorney General also may appeal if the Attorney General has appeared as
8 a party.

18 (a) The applicant or the Attorney General may request a hearing on the
19 decision of the Secretary under sections 6605e and 8008a of this title.
20 Additionally, a municipality in which the landfill is located or an interested
21 person may request such a hearing if a proposed landfill closure extension

1 order would increase the volume of waste disposed on a quarterly basis by 30
2 percent or more over the volume of waste disposed during the first quarter of
3 1992. Notice of a request for hearing shall be filed with the ~~Environmental~~
4 ~~Division and the~~ Secretary within 15 days ~~of~~ following the date of receipt of
5 the Secretary's decision. Upon receipt of the notice, the Secretary shall
6 forward a copy of the decision to the ~~Environmental Division~~ Board.

7 (b) The ~~Environmental judge~~ Board shall have authority to determine
8 whether the Secretary's decision is in conformance with the provisions of
9 sections 8008a and 6605e of this title. The ~~Environmental judge~~ Board may
10 affirm, modify, or reverse the Secretary's decision and any provision of any
11 order issued by the Secretary under sections 8008a and 6605e of this title.

12 (c) The hearing shall be held before the ~~Environmental Division~~ Board
13 within 30 days ~~of~~ following receipt by the ~~Division~~ Board of the notice, unless
14 continued for good cause. The ~~Environmental Division~~ Board shall issue a
15 written decision within 20 days ~~of~~ following the conclusion of the hearing, and
16 no later than 60 days from the request for hearing, unless the hearing process is
17 extended for good cause. The decision shall be sent to the parties by certified
18 mail, return receipt requested, and shall include:

19 * * *

20 (e) The ~~Environmental Division~~ Board may grant party status to an
21 interested person in a hearing under this section.

1

* * *

2 § 8019. CIVIL CITATIONS

3 (a) The Secretary and the Board each shall have the authority to adopt rules
4 for the issuance of civil citations for violations of their respective enabling
5 statutes or rules ~~adopted under those statutes that are enforceable in the~~
6 Environmental Division. Any proposed rule under this section shall include
7 the full, minimum, and waiver penalty amounts for each violation. The
8 maximum civil penalty for any violation brought under this section shall not
9 exceed \$3,000.00 exclusive of court fees.

10

* * *

11 (c) The Secretary or Board Chair and ~~his or her~~ the Secretary's or Board
12 Chair's duly authorized representative shall have the authority to amend or
13 dismiss a citation ~~by so marking the citation and returning it to the~~
14 Environmental Division or ~~by notifying the hearing officer or judge at the~~
15 hearing.

16

* * *

17 § 8020. PUBLIC PARTICIPATION IN ENFORCEMENT

18

* * *

19 (b) Draft and final action. Prior to issuing an administrative order,
20 assurance of discontinuance, or civil citation under this chapter ~~and sending it~~
21 to the Environmental Division, the Secretary or the Board shall post a draft

1 copy of the administrative order, assurance of discontinuance, or civil citation
2 for public notice and written comment for 30 days. At the conclusion of the
3 30-day notice and written comment period, the Secretary or the Board shall
4 evaluate the proposed action pursuant to the written comments received. After
5 the evaluation of the written comments, the Secretary or the Board may
6 withdraw an administrative order, assurance of discontinuance, or civil
7 citation. At the conclusion of the 30-day notice period, if no comments have
8 been received, the Secretary or the Board shall file the draft as a final
9 administrative order, assurance of discontinuance, or civil citation ~~with the~~
10 ~~Environmental Division, and the Environmental Division may review and~~
11 ~~approve as an order of the court the administrative order, assurance of~~
12 ~~discontinuance, or civil citation as set out elsewhere in this chapter. When the~~
13 ~~Secretary or Board issues a final administrative order, assurance of~~
14 ~~discontinuance, or civil citation, it shall be sent to the Environmental Division~~
15 ~~along with any written comments received during the 30-day comment period.~~
16 ~~Concurrent with filing with the Environmental Division, the~~ The Secretary or
17 Board shall post the final proposed action for public notice for 14 days.
18 (c) ~~Filing with court. If a comment was received on the draft document,~~
19 ~~the Environmental Division shall hold the administrative order, assurance of~~
20 ~~discontinuance, or civil citation for 14 days from the date of filing to allow any~~
21 ~~person who has filed written comments under subsection (b), who is not~~

1 satisfied with the final action of the Agency or the Board, and who meets the
2 definition of "aggrieved person" under subsection (a) of this section to file a
3 motion for permissive intervention pursuant to the procedure in Rule 24(e) of
4 the Vermont Rules of Civil Procedure. [Repealed.]

5 (d) ~~Court~~ Board action without motion to intervene. If no comment was
6 filed on the draft document or if, at the conclusion of the 14-day period, no
7 motion to intervene has been filed, the ~~Environmental Division~~ Board in its
8 discretion, with or without a hearing, shall issue an order to affirm, vacate, or
9 remand the administrative order, assurance of discontinuance, or civil citation.

10 * * *

11 (f) Court action upon motion to intervene. A motion for permissive
12 intervention shall clearly state the basis for the claim that the administrative
13 order, assurance of discontinuance, or civil citation is insufficient to carry out
14 the purposes of this chapter. A hearing may be held on the motion for
15 permissive intervention in the discretion of the ~~Environmental Division~~ Board.
16 When the ~~Environmental Division~~ Board determines that a motion to intervene
17 fails to meet the requirements for permissive intervention, the court shall deny
18 the motion.

19 (g) Emergency administrative order. When the Secretary issues an
20 emergency administrative order, the prefiling public notice and comment
21 provisions contained in this section shall not apply. The ~~Environmental~~

1 Division Board, without comment or hearing, shall act on the emergency
2 administrative order as required by section 8009 of this title and may issue its
3 own order. The Secretary shall publish the emergency administrative order
4 concurrent with filing it with the Environmental Division Board. A person
5 shall have 14 days from the date the emergency administrative order is filed to
6 file a motion for permissive intervention. A motion to intervene shall not stay
7 an emergency administrative order.

(h) Standard of review on motion to intervene. The ~~Environmental Division Board~~ shall evaluate a motion from an aggrieved person for permissive intervention in light of Rule 24(b)(1) of the Vermont Rules of Civil Procedure. When the ~~Environmental Division Board~~ permits an aggrieved person to intervene, it shall be for the sole purpose of establishing that the terms of an administrative order, emergency administrative order, assurance of discontinuance, or civil citation are insufficient to carry out the purposes of this chapter. The intervenor shall have the burden of proof by a preponderance of the evidence that the administrative order, emergency administrative order, assurance of discontinuance, or civil citation is insufficient to carry out the purposes of this chapter. A hearing may be held on the claim that the administrative order, emergency administrative order, assurance of discontinuance, or civil citation is insufficient to carry out the purposes of this chapter in the discretion of the ~~Environmental Division Board~~. The

1 Environmental Division Board, upon finding that the proposed action is
2 insufficient to carry out the purposes of this chapter, shall inform the parties in
3 writing and shall include the basis of its decision and shall vacate the proposed
4 action.

5 (i) Authority of Secretary or Board to object. The Secretary or Board shall
6 not oppose any motion filed for permissive intervention. When the
7 Environmental Division Board permits a person to intervene, the Secretary, the
8 Board, or the respondent may oppose the intervenor's claim that the proposed
9 action is insufficient to carry out the purposes of this chapter.

10 * * *

11 Sec. 29. APPROPRIATION

12 In fiscal year 2027, \$50,000.00 is appropriated from the General Fund to the
13 Land Use Review Board to fund training for appropriate municipal panels on
14 appeals procedures.

15 * * * Effective Date * * *

16 Sec. 30. EFFECTIVE DATE

17 This act shall take effect on July 1, 2026.