

1 S.169

2 Introduced by Senators Clarkson and Watson

3 Referred to Committee on

4 Date:

5 Subject: Conservation and development; land use; Act 250; appeals;

6 Environmental Division of the Superior Court

7 Statement of purpose of bill as introduced: This bill proposes to move appeals  
8 of Act 250 permits from the Environmental Division of the Superior Court to  
9 the Land Use Review Board.

10 An act relating to Act 250 permit appeals

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

12 \* \* \* Appeals to the Board \* \* \*

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

14 § 6025. RULES

15 (a) The Board may adopt rules of procedure for itself and the District  
16 Commissions. The Board's procedure for approving regional plans and  
17 regional plan maps, which may be adopted as rules or issued as guidance, shall  
18 ensure that the maps are consistent with legislative intent as expressed in  
19 section 2802 of this title and 24 V.S.A. §§ 4302 and 4348a. The Board shall  
20 adopt rules of procedure that govern appeals and other contested cases before it

1 that are consistent with this chapter. The rules may include the Board's use of  
2 hearing officers and Board panels, where less than a quorum of members of the  
3 Board hear a case.

4 \* \* \*

5 Sec. 2. 10 V.S.A. § 6027(h) is amended to read:

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

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

9 (2) appeals from an act or decision of a district coordinators under  
10 subsection 6007(d) of this chapter.

11 Sec. 3. 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. 4. 10 V.S.A. § 6089 is amended to read:

5 § 6089. APPEALS

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

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

16 (2) Participation before District Commission. A person shall not appeal  
17 an act or decision that was made by a District Commission unless the person  
18 was granted party status by the District Commission pursuant to subdivision  
19 6085(c)(1)(E) of this title, participated in the proceedings before the District  
20 Commission, and retained party status at the end of the District Commission  
21 proceedings. In addition, the person may only appeal those issues under the

1 criteria with respect to which the person was granted party status. However,  
2 notwithstanding these limitations, a person may appeal an act or decision of the  
3 District Commission if the Board determines that:

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

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

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

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

14 (4) De novo hearing. The Board shall hold a de novo hearing on all  
15 findings requested by any party that files an appeal or cross appeal, according  
16 to the rules of the Board. The Board may give due consideration to any  
17 findings made by the District Commission. The hearing shall be held in the  
18 municipality where the project subject to the appeal is located, if possible, or as  
19 close as possible.

20 (5) Notice of appeal. Notice of appeal shall be filed with the Board  
21 within 30 days following the act or decision by the District Commission. The

1 Board shall notify the parties who had party status before the District  
2 Commission of the filing of any appeal.

3 (6) Prehearing discovery.

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

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

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

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

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

20 (b) Prior decisions. Prior decisions of the former Environmental Board, the  
21 Water Resources Board, the Waste Facilities Panel, and the Environmental

1 Division of the Superior Court shall be given the same weight and  
2 consideration as prior decisions of the Land Use Review Board.

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

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

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

14 (f) Precedent. Precedent from the former Environmental Board and of the  
15 Land Use Review Board that interprets this chapter shall be provided the same  
16 deference by the Supreme Court as precedents accorded to other Executive  
17 Branch agencies charged with administering their enabling act. On appeal to  
18 the Supreme Court from the Environmental Review Board, decisions of the  
19 Land Use Review Board interpreting this act also shall be accorded that  
20 deference.



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

18 (d) Appeals to the Board.

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



1 excluding enforcement actions brought pursuant to chapters 201 and 211 of  
2 this title and the adoption of rules under 3 V.S.A. chapter 25;

3 (2) standardize the appeal periods, the parties who may appeal these acts  
4 or decisions, and the ability to stay any act or decision upon appeal, taking into  
5 account the nature of the different programs affected;

6 ~~(3) encourage people to get involved in the Act 250 permitting process~~  
7 ~~at the initial stages of review by a District Commission by requiring~~  
8 ~~participation as a prerequisite for an appeal of a District Commission decision~~  
9 ~~to the Environmental Division;~~

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

12 ~~(5)~~(4) consolidate appeals of decisions related to renewable energy  
13 generation plants and telecommunications facilities with review under,  
14 respectively, 30 V.S.A. §§ 248 and 248a, with appeals and consolidation of  
15 proceedings pertaining to telecommunications facilities occurring only while  
16 30 V.S.A. § 248a remains in effect.

17 § 8502. DEFINITIONS

18 As used in this chapter:

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

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

3 [Repealed.]

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

6           (4) “Land Use Review Board” or “Board” means the Board established  
7 under chapter 151 of this title.

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

9                 (A) the applicant;

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

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

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

16                (E) the solid waste management district in which the land is located,  
17 if the development or subdivision constitutes a facility pursuant to subdivision  
18 6602(10) of this title; and

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

20           (6) “Person” means any individual; partnership; company; corporation;  
21 association; joint venture; trust; municipality; the State of Vermont or any

1 agency, department, or subdivision of the State; any federal agency; or any  
2 other legal or commercial entity.

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

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

14 § 8503. APPLICABILITY

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

19 \* \* \*

1 (b) This chapter shall govern:

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

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

6 ~~(3) appeals from findings of fact and conclusions of law issued by the~~  
7 Land Use Review Board in its review of a designated growth center for  
8 conformance with the criteria of subsection 6086(a) of this title, pursuant to  
9 authority granted at 24 V.S.A. § 2793c(f).

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

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

14 (e) This chapter shall not govern appeals from rulemaking decisions by the  
15 Land Use Review Board under chapter 151 of this title or enforcement actions  
16 under chapters 201 and 211 of this title.

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

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

5 § 8504. APPEALS TO THE ENVIRONMENTAL DIVISION

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

12 \* \* \*

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

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

21 [Repealed.]

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(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.

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(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; and~~

~~(4) it shall be the goal of the Environmental Division to issue a decision on a case regarding an appeal of an appropriate municipal panel decision under 24 V.S.A. chapter 117 within 90 days following the close of the hearing.~~

(l) Representation. The Secretary may represent the Agency of Natural Resources in all appeals under this section. The Chair of the Land Use Review 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

1 Attorney General may represent the interests of those agencies of the State in  
2 the appeal.

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

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

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

10 (2) is a party by right;

11 (3) ~~is the Land Use Review Board;~~ [Repealed.]

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

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

14 § 4465, with respect to appeals under 24 V.S.A. chapter 117; or

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

17 (o) With respect to review of an act or decision of the Secretary pursuant to  
18 3 V.S.A. § 2809, the Division may reverse the act or decision or amend an  
19 allocation of costs to an applicant only if the Division determines that the act,  
20 decision, or allocation was arbitrary, capricious, or an abuse of discretion. In

1 the absence of such a determination, the Division shall require the applicant to  
2 pay the Secretary all costs assessed pursuant to 3 V.S.A. § 2809.

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

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

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

12 \* \* \*

13 § 8505. APPEALS TO THE SUPREME COURT

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

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

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

2 (3) the Supreme Court determines that:

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

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

7 \* \* \*

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

9 Sec. 8. 4 V.S.A. § 34 is amended to read:

10 § 34. JURISDICTION; ENVIRONMENTAL DIVISION

11 The Environmental Division shall have:

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

13 and

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

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

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

17 Sec. 9. 24 V.S.A. § 4471 is amended to read:

18 § 4471. APPEAL TO ENVIRONMENTAL DIVISION OR LAND USE

19 REVIEW BOARD

20 (a) Participation required. An interested person who has participated in a  
21 municipal regulatory proceeding authorized under this title may appeal a

1 decision rendered in that proceeding by an appropriate municipal panel to the  
2 Environmental Division or if the same project is subject to appeal at the Land  
3 Use Review Board, may file a consolidated appeal with the Board.

4 Participation in a local regulatory proceeding shall consist of offering, through  
5 oral or written testimony, evidence or a statement of concern related to the  
6 subject of the proceeding. An appeal from a decision of the appropriate  
7 municipal panel, or from a decision of the municipal legislative body under  
8 subsection 4415(d) of this title, shall be taken in such manner as the Supreme  
9 Court may by rule provide for appeals from State agencies governed by  
10 3 V.S.A. §§ 801–816, unless the decision is an appropriate municipal panel  
11 decision which the municipality has elected to be subject to review on the  
12 record.

13 \* \* \*

14 Sec. 10. RULEMAKING

15 The Environmental Review Board shall adopt rules of procedure for its  
16 hearing process pursuant to 10 V.S.A. § 6025(a) on or before January 1, 2028.

17 Sec. 11. CHECK-IN REPORT

18 On or before October 1, 2027, the Chair of the Land Use Review Board  
19 shall report on the status of the Board’s workload, capacity, and numbers of  
20 recent appeals. The report shall describe the steps the Board has taken to  
21 prepare to take on hearing permit appeals. The report shall assess the Board’s

1 ability to take on appeals of municipal permits and propose a timeline for  
2 doing so. The report shall be submitted to the House Committee on  
3 Environment and the Senate Committee on Natural Resources and Energy.

4 Sec. 12. ENVIRONMENTAL DIVISION; CONTINUED JURISDICTION

5 Notwithstanding the repeal of its jurisdictional authority to hear appeals  
6 relative to land use permits under Sec. 7 of this act, the Environmental  
7 Division of the Superior Court shall continue to have jurisdiction to complete  
8 its consideration of any appeal that is pending before it as of July 1, 2028, if  
9 the act or appeal has been filed.

10 Sec. 13. APPROPRIATIONS; POSITION

11 (a) In fiscal year 2027, the sum of \$125,000.00 from the General Fund to  
12 the Land Use Review Board for the set-up costs for the permit appeal process.

13 (b) In fiscal year 2027, the sum of \$175,000.00 from the General Fund to  
14 the Land Use Review Board for the position established in subsection (c) of  
15 this section.

16 (c) There is established one new full-time Legal Services Specialist  
17 position at the Land Use Review Board.

18 \* \* \* Effective Date \* \* \*

19 Sec. 14. EFFECTIVE DATE

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