

1 H.331

2 Introduced by Representatives Sheldon of Middlebury and Bongartz of  
3 Manchester

4 Referred to Committee on

5 Date:

6 Subject: Conservation and development; land use; natural resources; Act 250;  
7 Natural Resources Board; appeals

8 Statement of purpose of bill as introduced: This bill proposes to change the  
9 name of the Natural Resources Board to the Environmental Review Board and  
10 give it the authority to hear appeals from the District Commissions and district  
11 coordinators in addition to the Board's current duties. The Environmental  
12 Division of the Superior Court will continue to hear appeals from other  
13 environmental permits, enforcement, and local zoning appeals. Members of  
14 the Environmental Review Board would be appointed the same way as  
15 Superior Court judges, with the Judicial Nominating Board reviewing the  
16 candidates. After the members of the Board are appointed, the Board would  
17 adopt rules of procedure for appeals.

18 An act relating to the structure of the Natural Resources Board

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

20 Sec. 1. PURPOSE

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

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

14       § 6021. BOARD; VACANCY; REMOVAL

15       (a) ~~A Natural Resources~~ Board established. The Environmental Review

16       Board is created to administer the Act 250 program and hear appeals.

17       (1) The Board shall consist of five members appointed by the Governor,

18       after review and approval by the Environmental Review Board Nominating

19       Committee in accordance with subdivision (2) of this section and confirmed

20       with the advice and consent of the Senate, so that one appointment expires in

21       each year. The Chair shall be a full-time position, and the other four members

1 shall be half-time positions. In making these appointments, the Governor and  
2 the Senate shall give consideration to candidates who have experience,  
3 expertise, or skills relating to ~~the environment or land use~~ one or more of the  
4 following areas: environmental science, natural resources law and policy, land  
5 use planning, community planning, or environmental justice.

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

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

15 (2) ~~The Governor shall appoint up to five persons, with preference given~~  
16 ~~to former Environmental Board, Natural Resources Board, or District~~  
17 ~~Commission members, with the advice and consent of the Senate, to serve as~~  
18 ~~alternates for Board members.~~

19 (A) ~~Alternates shall be appointed for terms of four years, with initial~~  
20 ~~appointments being staggered~~ The Environmental Review Board Nominating

1 Committee shall advertise the position when a vacancy will occur on the  
2 Environmental Review Board.

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

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

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

20 (c) Removal. Notwithstanding the provisions of 3 V.S.A. § 2004, members  
21 shall only be removable for cause ~~only, except the Chair, who shall serve at the~~

1 ~~pleasure of the Governor~~ by the remaining members of the Board in  
2 accordance with the Vermont Administrative Procedures Act. The Board shall  
3 adopt rules pursuant to 3 V.S.A. chapter 25 to define the basis and process for  
4 removal.

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

10 (e) Retirement from office. When a Board member who hears all or a  
11 substantial part of a case retires from office before the case is completed, the  
12 member may remain a member of the Board, at the member's discretion, for  
13 the purpose of concluding and deciding that case and signing the findings and  
14 judgments involved. A retiring chair shall also remain a member for the  
15 purpose of certifying questions of law if a party appeals to the Supreme Court.  
16 For the service, the member shall receive a reasonable compensation to be  
17 fixed by the remaining members of the Board and necessary expenses while on  
18 official business.

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

20 § 6032. ENVIRONMENTAL REVIEW BOARD NOMINATING  
21 COMMITTEE

1       (a) Creation. The Environmental Review Board Nominating Committee is  
2       created for the purpose of assessing the qualifications of applicants for  
3       appointment to the Environmental Review Board in accordance with section  
4       6021 of this title.

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

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

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

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

14       (c) Terms. The members of the Committee shall serve for terms of two  
15       years. Members shall serve until their successors are appointed. Members  
16       shall serve not more than three consecutive terms in any capacity. A  
17       legislative member who is appointed as a member of the Committee shall  
18       retain the position for the term appointed to the Committee even if the member  
19       is subsequently not reelected to the General Assembly during the member's  
20       term on the Committee.

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

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

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

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

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

12               (1) operating procedures of the Committee;

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

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

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

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

5        (j) Duties.

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

11           (2) An applicant for the position of member of the Environmental  
12       Review Board shall not be required to be an attorney. If the candidate is  
13       admitted to practice law in Vermont or practices a profession requiring  
14       licensure, certification, or other professional regulation by the State, the  
15       Committee shall submit the candidate's name to the Court Administrator or the  
16       applicable State professional regulatory entity, and that entity shall disclose to  
17       the Committee any professional disciplinary action taken or pending  
18       concerning the candidate.

19           (3) Candidates shall be sought who have experience, expertise, or skills  
20       relating to one or more of the following areas: environmental science, natural



1 resources law and policy, land use planning, community planning, or  
2 environmental justice.

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

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

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

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

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

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

13 § 6025. RULES

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

17 \* \* \*

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

19 § 6027. POWERS

20 (a) The Board and District Commissions ~~each~~ shall have supervisory  
21 authority in environmental matters respecting projects within their jurisdiction

1 and shall apply their independent judgment in determining facts and  
2 interpreting law. Each shall have the power, with respect to any matter within  
3 its jurisdiction, to:

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

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

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

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

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

16 (c) The ~~Natural Resources~~ Board may designate or establish ~~such~~ regional  
17 offices as it deems necessary to implement the provisions of this chapter and  
18 the rules adopted ~~hereunder~~. The ~~Natural Resources~~ Board may designate or  
19 require a regional planning commission to receive applications, provide  
20 administrative assistance, perform investigations, and make recommendations.

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

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

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

14 (g) The ~~Natural Resources~~ Board shall manage the process by which land  
15 use permits are issued under section 6086 of this title, may initiate enforcement  
16 on related matters under the provisions of chapters 201 and 211 of this title,  
17 and may ~~petition the Environmental Division~~ initiate and hear petitions for  
18 revocation of land use permits issued under this chapter. Grounds for  
19 revocation are:

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

1 (2) noncompliance with any permit or permit condition;

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

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

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

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

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

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

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

21 \* \* \*

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

2 § 6022. PERSONNEL

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

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

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

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

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

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

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

2 § 6084. NOTICE OF APPLICATION; HEARINGS; COMMENCEMENT OF  
3 REVIEW

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

20 \* \* \*

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

6 \* \* \*

7 Sec. 8. 10 V.S.A. § 6086(f) is amended to read:

8 (f) Prior to any appeal of a permit issued by a District Commission, any  
9 aggrieved party may file a request for a stay of construction with the District  
10 Commission together with a declaration of intent to appeal the permit. The  
11 stay request shall be automatically granted for seven days upon receipt and  
12 notice to all parties and pending a ruling on the merits of the stay request  
13 pursuant to Board rules. The automatic stay shall not extend beyond the 30-  
14 day appeal period unless a valid appeal has been filed with the ~~Environmental~~  
15 ~~Division~~ Board. The automatic stay may be granted only once under this  
16 subsection during the 30-day appeal period. Following appeal of the District  
17 Commission decision, any stay request must be filed with the ~~Environmental~~  
18 ~~Division pursuant to the provisions of chapter 220 of this title~~ Board. A  
19 District Commission shall not stay construction authorized by a permit  
20 processed under the Board's minor application procedures.

1 Sec. 9. 10 V.S.A. § 6089 is amended to read:

2 § 6089. APPEALS

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

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

13 (2) Participation before District Commission. A person shall not appeal  
14 an act or decision that was made by a District Commission unless the person  
15 was granted party status by the District Commission pursuant to subdivision  
16 6085(c)(1)(E) of this title, participated in the proceedings before the District  
17 Commission, and retained party status at the end of the District Commission  
18 proceedings. In addition, the person may only appeal those issues under the  
19 criteria with respect to which the person was granted party status. However,  
20 notwithstanding these limitations, a person may appeal an act or decision of the  
21 District Commission if the Board determines that:



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

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

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

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

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

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

19          (6) Prehearing discovery.

20                 (A) A party may obtain discovery of expert witnesses who may  
21                 provide testimony relevant to the appeal. Expert witness prefiled testimony

1 shall be in accordance with the Vermont Rules of Evidence. The use of  
2 discovery for experts shall comply with the requirements in the Vermont Rules  
3 of Civil Procedure 26–37.

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

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

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

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

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

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

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

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

9        (f) Precedent. Precedent from the former Environmental Board and of the  
10       Environmental Review Board that interpret this chapter shall be provided the  
11       same deference by the Supreme Court as precedents accorded to other  
12       Executive Branch agencies charged with administering their enabling act. On  
13       appeal to the Supreme Court from the Environmental Review Board, decisions  
14       of the Environmental Review Board interpreting this act also shall be accorded  
15       that deference.

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

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



1 question, the district coordinator, at the expense of the requestor and in  
2 accordance with rules of the Board, shall publish notice of the issuance of the  
3 opinion in a local newspaper generally circulating in the area where the land  
4 that is the subject of the opinion is located and shall serve the opinion on all  
5 persons listed in subdivisions 6085(c)(1)(A) through (D) of this title. In  
6 addition, the requestor who is seeking a final determination shall consult with  
7 the district coordinator and obtain approval of a subdivision 6085(c)(1)(E) list  
8 of persons who shall be notified by the district coordinator because they are  
9 adjoining property owners or other persons who would be likely to be able to  
10 demonstrate a particularized interest protected by this chapter that may be  
11 affected by an act or decision by a District Commission.

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

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

18 (2) Failure to appeal within 30 days following the issuance of the  
19 jurisdictional opinion shall render the decision of the district coordinator under  
20 subsection (c) of this section the final determination regarding jurisdiction  
21 unless the underlying jurisdictional opinion was not properly served on persons

1 listed in subdivisions 6085(c)(1)(A) through (D) of this title and on persons on  
2 a subdivision 6085(c)(1)(E) list approved under subsection (c) of this section.

3 Sec. 11. 10 V.S.A. § 6083a is amended to read:

4 § 6083a. ACT 250 FEES

5 \* \* \*

6 (i) All persons filing an appeal, cross appeal, or petition from a District  
7 Commission decision or jurisdictional determination shall pay a fee of  
8 \$295.00, plus publication costs.

9 \* \* \* Appeals \* \* \*

10 Sec. 12. 10 V.S.A. chapter 220 is amended to read:

11 CHAPTER 220. CONSOLIDATED ENVIRONMENTAL APPEALS

12 § 8501. PURPOSE

13 It is the purpose of this chapter to:

14 (1) consolidate existing appeal routes for municipal zoning and  
15 subdivision decisions and acts or decisions of the Secretary of Natural  
16 Resources, ~~district environmental coordinators, and District Commissions,~~  
17 excluding enforcement actions brought pursuant to chapters 201 and 211 of  
18 this title and the adoption of rules under 3 V.S.A. chapter 25;

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

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

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

7           (5)(4) consolidate appeals of decisions related to renewable energy  
8 generation plants and telecommunications facilities with review under,  
9 respectively, 30 V.S.A. §§ 248 and 248a, with appeals and consolidation of  
10 proceedings pertaining to telecommunications facilities occurring only while  
11 30 V.S.A. § 248a remains in effect.

12 § 8502. DEFINITIONS

13 As used in this chapter:

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

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

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

1 (4) ~~“Natural Resources~~ Environmental Review Board” or “Board”

2 means the Board established under chapter 151 of this title.

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

4 (A) the applicant;

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

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

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

11 (E) the solid waste management district in which the land is located,  
12 if the development or subdivision constitutes a facility pursuant to subdivision  
13 6602(10) of this title; and

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

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

19 (7) “Person aggrieved” means a person who alleges an injury to a  
20 particularized interest protected by the provisions of law listed in section 8503  
21 of this title; attributable to an act or decision by ~~a district coordinator, District~~



1 ~~Commission~~, the Secretary, or the Environmental Division that can be  
2 redressed by the Environmental Division or the Supreme Court.

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

9 § 8503. APPLICABILITY

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

14 \* \* \*

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

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

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

20 ~~(3) appeals from findings of fact and conclusions of law issued by the~~  
21 ~~Natural Resources Board in its review of a designated growth center for~~

1 ~~conformance with the criteria of subsection 6086(a) of this title, pursuant to~~  
2 ~~authority granted at 24 V.S.A. § 2793e(f). [Repealed.]~~

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

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

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

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

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

18 § 8504. APPEALS TO THE ENVIRONMENTAL DIVISION

19 (a) ~~Act 250 and~~ Agency appeals. Within 30 days of the date of following  
20 the act or decision, any person aggrieved by an act or decision of the Secretary,  
21 ~~a District Commission, or a district coordinator~~ under the provisions of law

1 listed in section 8503 of this title, or any party by right, may appeal to the  
2 Environmental Division, except for an act or decision of the Secretary under  
3 subdivision 6086b(3)(E) of this title or governed by section 8506 of this title.

4 \* \* \*

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

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

13 [Repealed.]

14 \* \* \*

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

17 (1) ~~Participation before District Commission. An aggrieved person shall~~  
18 ~~not appeal an act or decision that was made by a District Commission unless~~  
19 ~~the person was granted party status by the District Commission pursuant to~~  
20 ~~subdivision 6085(c)(1)(E) of this title, participated in the proceedings before~~  
21 ~~the District Commission, and retained party status at the end of the District~~

1 ~~Commission proceedings. In addition, the person may only appeal those issues~~  
2 ~~under the criteria with respect to which the person was granted party status.~~  
3 ~~However, notwithstanding these limitations, an aggrieved person may appeal~~  
4 ~~an act or decision of the District Commission if the Environmental judge~~  
5 ~~determines that:~~

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

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

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

12 (2) Participation before the Secretary.

13 \* \* \*

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

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

19 ~~(2) Failure to appeal within the time required under subsection (a) of~~  
20 ~~this section shall render the decision of the district coordinator under~~  
21 ~~subsection 6007(c) of this title the final determination regarding jurisdiction~~

1 ~~under chapter 151 of this title unless the underlying jurisdictional opinion was~~  
2 ~~not properly served on persons listed in subdivisions 6085(c)(1)(A) through~~  
3 ~~(D) of this title and on persons on a subdivision 6085(c)(1)(E) list approved~~  
4 ~~under subsection 6007(e) of this title. [Repealed.]~~

5 \* \* \*

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

8 \* \* \*

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

14 \* \* \*

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

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

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

4           ~~(3) if a District Commission issues a partial decision under subsection~~  
5           ~~6086(b) of this title, any appeal of that decision must be taken within 30 days~~  
6           ~~of the date of that decision.~~

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

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

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

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

21                 (2) is a party by right;

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

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

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

4           § 4465, with respect to appeals under 24 V.S.A. chapter 117; or

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

7           (o) With respect to review of an act or decision of the Secretary pursuant to  
8 3 V.S.A. § 2809, the Division may reverse the act or decision or amend an  
9 allocation of costs to an applicant only if the Division determines that the act,  
10 decision, or allocation was arbitrary, capricious, or an abuse of discretion. In  
11 the absence of such a determination, the Division shall require the applicant to  
12 pay the Secretary all costs assessed pursuant to 3 V.S.A. § 2809.

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

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

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

1 § 8505. APPEALS TO THE SUPREME COURT

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

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

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

10 (3) the Supreme Court determines that:

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

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

15 \* \* \*

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

17 Sec. 13. 4 V.S.A. § 34 is amended to read:

18 § 34. JURISDICTION; ENVIRONMENTAL DIVISION

19 The Environmental Division shall have:

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



1           (2) jurisdiction of matters arising under 24 V.S.A. chapter 61,  
2           subchapter 12 and 24 V.S.A. chapter 117; ~~and~~

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

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

5           Sec. 14. ENVIRONMENTAL REVIEW BOARD POSITIONS;

6                     APPROPRIATION

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

9                     (1) one Staff Attorney 1; and

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

11           (b) The sum of \$384,000.00 is appropriated to the Environmental Review  
12           Board from the General Fund in fiscal year 2024 for the positions established  
13           in subsection (a) of this section and for additional operating costs required to  
14           implement the appeals process established in this act.

15           Sec. 15. NATURAL RESOURCES BOARD TRANSITION

16           (a) The Governor shall appoint the members of Environmental Review  
17           Board on or before July 1, 2024, and the terms of any Natural Resources Board  
18           member not appointed consistent with the requirements of 10 V.S.A.  
19           § 6021(a)(1)(A) or (B) shall expire on that day.

20           (b) As of July 1, 2024, all appropriations and employee positions of the  
21           Natural Resources Board are transferred to the Environmental Review Board.

