

1 H.451

2 Introduced by Representative Smith of New Haven

3 Referred to Committee on

4 Date:

5 Subject: Conservation and development; state land use; Act 250; municipal

6 and county government; municipal and regional planning and

7 development; pro se litigants; appeals

8 Statement of purpose of bill as introduced: This bill proposes to require a pro
9 se litigant appealing a decision of a district environmental commission to assert
10 that the appeal is not frivolous and is not being submitted to harass, cause
11 unnecessary delay, or needlessly increase the cost of permitting. If the
12 Environmental Division of the Superior Court determines that these provisions
13 have been violated by the pro se litigant, the Environmental Division, on its
14 own initiative or by motion of a party, may impose sanctions upon the pro se
15 litigant, including directives of a nonmonetary nature, an order to pay a penalty
16 to the Environmental Division, and an order directing payment of attorney's
17 fees and other expenses incurred to the party that made the motion. The bill
18 proposes to establish how notice of the motion is served on the pro se litigant.
19 The bill also proposes to enact a similar section in the State's planning and
20 zoning chapter.

1 An act relating to appeals of pro se litigants in proceedings under Act 250
2 and under 24 V.S.A. chapter 117

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

4 Sec. 1. 10 V.S.A. § 6094 is added to read:

5 § 6094. RELIEF FROM FRIVOLOUS APPEALS

6 (a) By submitting an appeal from an act or decision of a district coordinator
7 or a district environmental commission (whether by signing, filing, submitting,
8 or later advocating), a pro se litigant is certifying that to the best of the
9 person's knowledge, information, and belief, formed after an inquiry
10 reasonable under the circumstances:

11 (1) the appeal is not being submitted for any improper purpose, such as
12 to harass or to cause unnecessary delay or needless increase in the cost of
13 permitting;

14 (2) the appeal submitted is warranted by a nonfrivolous argument for the
15 extension, modification, reversal, or revocation of a granted or denied permit;

16 (3) the allegations and other factual contentions have evidentiary
17 support or, if specifically so identified, are likely to have evidentiary support
18 after a reasonable opportunity for further investigation; and

19 (4) the denials of factual contentions are warranted on the evidence or, if
20 specifically so identified, are reasonably based on a lack of information or
21 belief.

1 (b) If, after notice and a reasonable opportunity to respond, the
2 Environmental Division of the Superior Court determines that subsection (a) of
3 this section has been violated, the Environmental Division, subject to the
4 conditions stated in this subsection, may impose an appropriate sanction upon
5 the parties that have violated subsection (a) of this section or are responsible
6 for the violation.

7 (1) Sanctions may be imposed in two ways:

8 (A) By motion. A motion for sanctions shall be made separately
9 from other motions or requests and shall describe the specific conduct alleged
10 to violate subsection (a) of this section. If warranted, the Environmental
11 Division may award to the party prevailing on the motion the reasonable
12 expenses and attorney's fees incurred in presenting or opposing the motion.

13 (B) On the Environmental Division's initiative. On its own initiative,
14 the Environmental Division may enter an order describing the specific conduct
15 that appears to violate subsection (a) of this section and directing a party to
16 show cause why it has not violated that subsection.

17 (2) A sanction imposed for violation of this section shall be limited to
18 what is sufficient to deter repetition of this conduct or comparable conduct by
19 others similarly situated. Subject to the limitations in subdivisions (A) and (B)
20 of this subdivision (2), the sanction may consist of or include directives of a
21 nonmonetary nature, an order to pay a penalty into the Environmental

1 Division, and, if imposed on a motion and warranted for effective deterrence,
2 an order directing payment to the party that made the motion of some or all of
3 the reasonable attorney's fees and other expenses incurred by that party as a
4 direct result of the violation.

5 (A) Monetary sanctions may not be awarded against a represented
6 party for a violation of subdivision (a)(2) of this section.

7 (B) Monetary sanctions may not be awarded on the Environmental
8 Division's initiative unless the Environmental Division issues its order to show
9 cause before a voluntary dismissal or settlement of the claims made by or
10 against the party that is to be sanctioned.

11 (3) When imposing sanctions, the Environmental Division shall describe
12 the conduct determined to constitute a violation of this section and explain the
13 basis for the sanction imposed.

14 (c) Service of a motion for sanctions on a party shall be made to that party
15 directly.

16 (1) Service shall be made by:

17 (A) Delivering a copy to the person served by:

18 (i) handing it to the person;

19 (ii) leaving it at the person's office with a clerk or other person
20 in charge or, if no one is in charge, leaving it in a conspicuous place in the
21 office; or

1 (iii) if the person has no office or the office is closed, leaving it at
2 the person's dwelling house or usual place of abode with someone of suitable
3 age and discretion residing there.

4 (B) Mailing a copy to the last known address of the person served.
5 Service by mail is complete on mailing.

6 (C) If the person served has no known address, leaving a copy with
7 the appropriate authority at the Environmental Division.

8 (D) Delivering a copy by any other means, including electronic
9 means, consented to in writing by the person served. Service by electronic
10 means is complete on transmission; service by other consented means is
11 complete when the person making service delivers the copy to the agency
12 designated to make delivery.

13 (2) Service by electronic means is not effective if the party making
14 service learns that the attempted service did not reach the person to be served.

15 (3) All papers after the complaint required to be served upon a party,
16 together with a certificate of service, must be filed with the Environmental
17 Division within a reasonable time after service. The filing of papers with the
18 Environmental Division shall be made by filing them with the Environmental
19 Division. The Environmental Division may permit papers to be filed, signed,
20 or verified by electronic means. The Environmental Division shall not refuse
21 to accept for filing any paper presented for that purpose solely because it is not

1 presented in proper form as required by this section, court rules, or any local
2 rules or practices.

3 (4) Every motion for sanctions shall be served as provided in this
4 section but shall not be filed with or submitted to the Environmental Division
5 unless, within 21 days after service of the motion or such other period as the
6 Environmental Division may prescribe, the appeal is not withdrawn or
7 appropriately corrected.

8 Sec. 2. 24 V.S.A. § 4477 is added to read:

9 § 4477. RELIEF FROM FRIVOLOUS APPEALS

10 (a) By submitting an appeal from an act or decision under this chapter,
11 whether by signing, filing, submitting, or later advocating, a pro se litigant is
12 certifying that to the best of the person's knowledge, information, and belief,
13 formed after an inquiry reasonable under the circumstances:

14 (1) the appeal is not being submitted for any improper purpose, such as
15 to harass or to cause unnecessary delay or needless increase in the cost of
16 permitting;

17 (2) the appeal submitted is warranted by a nonfrivolous argument for the
18 extension, modification, reversal, or revocation of a granted or denied permit;

19 (3) the allegations and other factual contentions have evidentiary
20 support or, if specifically so identified, are likely to have evidentiary support
21 after a reasonable opportunity for further investigation; and

1 (4) the denials of factual contentions are warranted on the evidence or, if
2 specifically so identified, are reasonably based on a lack of information or
3 belief.

4 (b) If, after notice and a reasonable opportunity to respond, the
5 Environmental Division of the Superior Court determines that subsection (a) of
6 this section has been violated, the Environmental Division, subject to the
7 conditions stated in this subsection, may impose an appropriate sanction upon
8 the parties that have violated subsection (a) of this section or are responsible
9 for the violation.

10 (1) Sanctions may be imposed in two ways:

11 (A) By motion. A motion for sanctions shall be made separately
12 from other motions or requests and shall describe the specific conduct alleged
13 to violate subsection (a) of this section. If warranted, the Environmental
14 Division may award to the party prevailing on the motion the reasonable
15 expenses and attorney's fees incurred in presenting or opposing the motion.

16 (B) On the Environmental Division's initiative. On its own initiative,
17 the Environmental Division may enter an order describing the specific conduct
18 that appears to violate subsection (a) of this section and directing a party to
19 show cause why it has not violated that subsection.

20 (2) A sanction imposed for violation of this section shall be limited to
21 what is sufficient to deter repetition of this conduct or comparable conduct by

1 others similarly situated. Subject to the limitations in subdivisions (A) and (B)
2 of this subdivision (2), the sanction may consist of or include directives of a
3 nonmonetary nature, an order to pay a penalty into the Environmental
4 Division, and, if imposed on a motion and warranted for effective deterrence,
5 an order directing payment to the party that made the motion of some or all of
6 the reasonable attorney's fees and other expenses incurred by that party as a
7 direct result of the violation.

8 (A) Monetary sanctions may not be awarded against a represented
9 party for a violation of subdivision (a)(2) of this section.

10 (B) Monetary sanctions may not be awarded on the Environmental
11 Division's initiative unless the Environmental Division issues its order to show
12 cause before a voluntary dismissal or settlement of the claims made by or
13 against the party that is to be sanctioned.

14 (3) When imposing sanctions, the Environmental Division shall describe
15 the conduct determined to constitute a violation of this section and explain the
16 basis for the sanction imposed.

17 (c) Service of a motion for sanctions on a party shall be made to that party
18 directly.

19 (1) Service shall be made by:

20 (A) Delivering a copy to the person served by:

21 (i) handing it to the person;

1 (ii) leaving it at the person's office with a clerk or other person in
2 charge or, if no one is in charge, leaving it in a conspicuous place in the
3 office; or

4 (iii) if the person has no office or the office is closed, leaving it at
5 the person's dwelling house or usual place of abode with someone of suitable
6 age and discretion residing there.

7 (B) Mailing a copy to the last known address of the person served.
8 Service by mail is complete on mailing.

9 (C) If the person served has no known address, leaving a copy with
10 the appropriate authority at the Environmental Division.

11 (D) Delivering a copy by any other means, including electronic
12 means, consented to in writing by the person served. Service by electronic
13 means is complete on transmission; service by other consented means is
14 complete when the person making service delivers the copy to the agency
15 designated to make delivery.

16 (2) Service by electronic means is not effective if the party making
17 service learns that the attempted service did not reach the person to be served.

18 (3) All papers after the complaint required to be served upon a party,
19 together with a certificate of service, must be filed with the Environmental
20 Division within a reasonable time after service. The filing of papers with the
21 Environmental Division shall be made by filing them with the Environmental

1 Division. The Environmental Division may permit papers to be filed, signed,
2 or verified by electronic means. The Environmental Division shall not refuse
3 to accept for filing any paper presented for that purpose solely because it is not
4 presented in proper form as required by this section, court rules, or any local
5 rules or practices.

6 (4) Every motion for sanctions shall be served as provided in this
7 section but shall not be filed with or submitted to the Environmental Division
8 unless, within 21 days after service of the motion or such other period as the
9 Environmental Division may prescribe, the appeal is not withdrawn or
10 appropriately corrected.

11 Sec. 3. EFFECTIVE DATE

12 This act shall take effect on July 1, 2013.