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S.214

Introduced by Senator Lyons  
Referred to Committee on  
Date:  
Subject: Land use; natural resources; Act 250; local zoning; appeals; permit  
process consolidation; department of environmental quality  
Statement of purpose: This bill proposes to consolidate state environmental  
permit programs, including water quality, air pollution control, waste  
management, and Act 250, and associated appeals, into a department of  
environmental quality to be directed by a five-person environmental council  
headed by a full-time chair; to require that the council include members with  
relevant scientific expertise and be supported by staff scientists and counsel; to  
have the council appointed by an environmental appointments committee,  
subject to senate confirmation; to give the council the rulemaking functions of  
the current natural resources board and secretary of natural resources  
pertaining to environmental permits; to place all divisions and employees of  
the current department of environmental conservation and natural resources  
board, including those assigned to the Act 250 district commissions, within the  
department of environmental quality; to require that the environmental council  
will provide for the day-to-day administration of the department of  
environmental quality through an executive director to whom division directors

1 will report; to provide that the council shall appoint a director of environmental  
2 enforcement with authority to issue administrative orders and make referrals to  
3 the attorney general's office; to provide that, when a project is subject to Act  
4 250, the issuance of all other permits, certificates, and approvals required from  
5 the department of environmental quality shall be consolidated into the Act 250  
6 process and conducted by the district commission, with scientists of the  
7 department who would normally issue the other permits making  
8 recommendations to which the district commission will give substantial  
9 deference; to endow the environmental council with the appellate and  
10 enforcement hearing authority of the current environmental court, and to allow  
11 the council to use hearing officers to hear cases; to restrict certain staff,  
12 including the executive and enforcement directors, from participating in the  
13 council's quasi-judicial deliberations; to allow appeals of growth center  
14 designations and regional and municipal plan conformance with statutory goals  
15 to the environmental council; to provide that the departments of fish and  
16 wildlife and of forests, parks and recreation shall become independent  
17 departments attached to the department of environmental quality for  
18 administrative support; and to repeal the agency and secretary of natural  
19 resources, the department and commissioner of environmental conservation,  
20 the natural resources board, and the environmental court. The bill contains  
21 other proposals that pertain to state and local land use review. The bill would

1 require that the department of environmental quality convene a working group  
2 on further improving Vermont's environmental permit process and that the  
3 department perform data gathering and analysis to inform the group and,  
4 potentially, future legislation.

5 An act relating to consolidating land use and environmental permit  
6 administration, rulemaking, and appeals into a department of environmental  
7 quality headed by an environmental council

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

9 \* \* \* Creation of Department of Environmental Quality \* \* \*

10 Sec. 1. 3 V.S.A. chapter 51 is redesignated to read:

11 CHAPTER 51. ~~NATURAL RESOURCES~~ ENVIRONMENTAL QUALITY;  
12 FISH AND WILDLIFE; FORESTS AND PARKS

13 Sec. 2. 3 V.S.A. §§ 2801 through 2804 are amended to read:

14 § 2801. DEFINITIONS

15 In this chapter, the following words mean:

16 (1) ~~Agency: The agency of natural resources~~ Council or environmental  
17 council: the environmental council created and appointed pursuant to sections  
18 2802 and 2821 of this title.

19 (2) Chair: the chair of the environmental council appointed pursuant to  
20 section 2821 of this title.

1           ~~(2)(3)~~ Department: ~~A major component of the agency~~ The department  
2 of environmental quality created pursuant to section 2802 of this title, except  
3 when used as part of the terms department of fish and wildlife and department  
4 of forests, parks and recreation.

5           ~~(3)(4)~~ Director: ~~The~~ Except when used as part of the term “executive  
6 director,” the head of a division or branch of the agency department.

7           ~~(4)(5)~~ Division: A major substantive, technical, or administrative  
8 component of a the department ~~or a technical or administrative support~~  
9 ~~component of the agency.~~

10           ~~(5) Commissioner: The head of a department responsible to the~~  
11 ~~secretary for the administration of the department.~~

12           ~~(6) Secretary: The head of the agency, a member of the governor’s~~  
13 ~~cabinet and responsible to the governor for the administration of the agency~~

14 Executive director: the executive director of the department appointed by the  
15 council pursuant to section 2851 of this title.

16 § 2802. CREATION OF ~~AGENCY~~ DEPARTMENT

17           ~~(a) An agency of natural resources~~ A department of environmental quality  
18 is created consisting of the following:

19           (1) ~~The department of fish and wildlife~~ environmental council.

20           (2) ~~The department of forests, parks and recreation.~~ The division of  
21 state land use, to include:

1 (A) ~~The division of forests~~ A director.

2 (B) ~~The division of parks~~ Act 250 district coordinators and other staff  
3 assigned to the district commissions created under section 6026 of Title 10.

4 (C) ~~The division of recreation~~ district commissions created under  
5 section 6026 of Title 10, attached for administrative support.

6 (3) ~~{Repealed.}~~ The division of environmental enforcement created  
7 under section 2880 of this title.

8 (4) ~~The board of forests, parks and recreation~~ office of environmental  
9 counsel created under section 2881 of this title.

10 (5) The divisions and employees of the former department of  
11 environmental conservation and the former agency of natural resources central  
12 office.

13 (6) ~~The state natural resources conservation council~~ planning division  
14 created under section 2877 of this title.

15 (7) The division of geology and mineral resources created under section  
16 2879 of this title.

17 (8) The administrative services division created under section 2876 of  
18 this title.

19 (b) ~~The natural resources board~~ environmental council is attached to the  
20 agency for the purpose of receiving administrative support created to be the

1 chief executive body of the department and to exercise such quasi-judicial and  
2 other authority as is granted to it by law.

3 (c) The ~~agency~~ department will provide representation on the following  
4 compact commissions:

5 (1) The interstate commission on the Lake Champlain basin.

6 (2) The New England interstate water pollution control commission.

7 (d) Other departments and agencies of state government shall cooperate  
8 with the department and the council and make available to them data and  
9 facilities as may be needed to assist them in carrying out their duties and  
10 functions. There shall be established a regular schedule of project review that  
11 shall assure that all affected departments and agencies recognize and pursue  
12 their respective responsibilities. State employees whose job is to assist  
13 applicants in the permitting process shall endeavor to assist all applicants  
14 regardless of the size and value of the projects involved.

15 § 2803. ADVISORY CAPACITY

16 ~~(a) All~~ Except for the environmental council, all boards, committees,  
17 councils, and activities ~~and departments~~ which under this chapter are a part of  
18 the ~~agency~~ department shall be advisory only, except as hereinafter provided,  
19 and the powers and duties of such boards, committees, councils, and activities  
20 ~~and departments~~, including administrative, policy making, rule making, and

1 regulatory functions, shall vest in and be exercised by the ~~secretary of the~~  
2 ~~agency~~ the environmental council.

3 ~~(b) Notwithstanding subsection (a) of this section or any other provision of~~  
4 ~~this chapter, the fish and wildlife board and the natural resources board shall~~  
5 ~~retain and exercise all powers and functions given to them by law which are of~~  
6 ~~regulatory or quasi-judicial nature, including the power to adopt, amend and~~  
7 ~~repeal rules and regulations, to conduct hearings, to adjudicate controversies~~  
8 ~~and to issue and enforce orders, in the manner and to the extent to which those~~  
9 ~~powers are given to those respective boards by law.~~

10 (c) [Repealed.]

11 § 2804. PERSONNEL DESIGNATION

12 The ~~secretary, deputy secretary, commissioners, deputy commissioners,~~  
13 ~~chair, executive director,~~ attorneys, director of environmental enforcement, and  
14 all members of ~~boards, committees, commissions or councils attached to the~~  
15 ~~agency for support~~ the council are exempt from the classified state service, as  
16 are any members of other boards, committees, or councils that are attached to  
17 the department. Except as authorized by section 311 of this title or otherwise  
18 by laws, all other positions in the department shall be within the classified  
19 service.

1 Sec. 3. REDESIGNATION

2 3 V.S.A. chapter 51, subchapter 2 is redesignated to read:

3 Subchapter 2. Secretary Council

4 Sec. 4. 3 V.S.A. §§ 2821 and 2822 are amended to read:

5 § 2821. ~~APPOINTMENT AND SALARY COUNCIL; CHAIR; VICE CHAIR~~

6 (a) The ~~agency department~~ shall be under the direction and supervision of a  
7 ~~secretary, who shall be appointed by the governor with the advice and consent~~  
8 ~~of the senate and shall serve at the pleasure of the governor~~ the environmental  
9 council through the chair and, subject to the chair's supervision, the executive  
10 director.

11 (b) The council shall consist of a full-time chair and four full-time  
12 members.

13 (1) No member shall be required to be admitted to the practice of law in  
14 this state. At least one member of the council shall have expertise in water  
15 quality and water resources, one member shall have expertise in land use  
16 planning, and one member shall have expertise in wildlife habitat and ecology.  
17 A member may combine more than one of these areas of expertise.

18 (2) The chair and members of the council shall be appointed in  
19 accordance with this subsection.



1           (A) An environmental appointments committee is created, to consist  
2 of seven members appointed for six-year terms commencing on August 1 as  
3 follows:

4                   (i) Three members appointed by the governor.

5                   (ii) Two members appointed by the speaker of the house, one of  
6 whom shall be a member of the house committee on fish, wildlife and water  
7 resources and one of whom shall be a member of the house committee on  
8 natural resources and energy.

9                   (iii) Two members appointed by the president pro tempore, each  
10 of whom shall be a member of the senate committee on natural resources and  
11 energy.

12                   (iv) No member of the environmental appointments committee  
13 may serve on the council. The department shall provide administrative  
14 assistance to the environmental appointments committee.

15           (B) Whenever a vacancy on the council occurs, the environmental  
16 appointments committee shall make a public announcement of the vacancy and  
17 shall solicit applications for the vacant council position. The committee shall  
18 review applications to ensure that there are members of the council who meet  
19 the expertise requirements of subdivision (1) of this subsection. In evaluating  
20 applicants, the committee shall give due consideration to other relevant areas  
21 of expertise such as air pollution control, waste management, rivers

1 management, and environmental law, and to other relevant factors such as  
2 management and administrative experience, judicial temperament, and  
3 experience in conducting quasi-judicial proceedings. The committee shall  
4 make the appointment by majority vote, and the appointment shall then be  
5 subject to the consent of the senate.

6 (c) The term of each member of the council shall be six years, except as set  
7 forth in subsection (d) of this section. Each term shall commence on  
8 February 1. Any appointment to fill a vacancy shall be for the unexpired  
9 portion of the term vacated. A member wishing to succeed himself or herself  
10 in office may seek reappointment under the terms of this section.

11 (d) The terms of the council members shall be staggered. The initial term  
12 of the chair shall be six years and the initial terms of the other four council  
13 members shall be two, three, four, and five years, respectively.

14 (e) Notwithstanding section 2004 of this title or any other provision of law,  
15 members of the council may be removed only for cause.

16 (f) The chair shall be the convening and presiding officer of the council.  
17 The council shall elect one of its members to be vice chair. The vice chair  
18 shall serve as chair in the chair's absence or a vacancy in the office of the  
19 chair. The provisions of subsection 253(d) of this title shall apply.

20 (g) The council shall determine the policies of the department.

1       (h) Rules to be adopted by the department shall be developed by the  
2 applicable division and presented to the council for its consideration and  
3 approval prior to commencement of rulemaking under chapter 25 of this title.  
4 The council may initiate rulemaking on its own motion on any matter within  
5 the department's jurisdiction. Authority to approve the filing of a final  
6 proposal and an adopted rule on behalf of the department under sections 841  
7 and 843 of this title shall rest with the council.

8       (i) The council shall make regulations consistent with law for the internal  
9 administration of the department and its programs.

10       (j) The council shall have such quasi-judicial functions and authorities as  
11 are conferred on it by law and shall develop a code of conduct and procedures  
12 applicable to the members of the council and staff of the department to prevent  
13 conflicts of interest and the discussion with members of the council outside the  
14 hearing process of pending applications, investigations, or cases that may be  
15 the subject of appeals or enforcement or revocation hearings before the  
16 council, and to ensure compliance with chapter 25 of this title as it pertains to  
17 contested cases.

18       (k) The council may create such advisory councils or committees as it  
19 deems necessary within the department and appoint their members for a term  
20 not exceeding the period remaining in the term of the chair at the time of the  
21 members' appointment.

1 § 2822. BUDGET AND REPORT; POWERS

2 (a) The ~~secretary council~~ shall ~~be responsible to the governor and shall plan~~  
3 and, through the executive director, coordinate and direct the functions vested  
4 in the ~~agency department~~. The ~~secretary council~~ shall prepare and submit to  
5 the governor an annual budget and shall prepare and submit to the governor  
6 and the general assembly in November of each year a report concerning the  
7 operation of the ~~agency department~~ for the preceding fiscal year and the future  
8 goals and objectives of the ~~agency department~~.

9 (b) The ~~secretary council~~ shall also have the powers and duties set forth in  
10 section 2803 of this title.

11 (c) If a waiver has been granted by the public service board under  
12 subsection 248(k) of Title 30, the ~~secretary chair~~ or the ~~secretary's chair's~~  
13 designee shall expedite and may authorize temporary emergency permits with  
14 appropriate conditions to minimize significant adverse environmental impacts  
15 within the jurisdiction of the ~~agency department~~, after limited or no  
16 opportunity for public comment, allowing site preparation for or construction  
17 or operation of an electric transmission facility or a generating facility  
18 necessary to assure the stability or reliability of the electric system or a natural  
19 gas facility, regardless of any provision in Title 10 or chapter 11 of Title 29.  
20 Such authorization shall be given only after findings by the ~~secretary chair~~  
21 that: good cause exists because an emergency situation has occurred; the

1 applicant will fulfill any conditions imposed to minimize significant adverse  
2 environmental impacts; and the applicant will, upon the expiration of the  
3 temporary emergency permit, remove, relocate, or alter the facility as required  
4 by law or by an order of the public service board. A permit issued under this  
5 subsection shall be subject to such conditions as are required by the ~~secretary~~  
6 chair and shall be valid for the duration of the declared emergency plus 180  
7 days, or such lesser overall term as determined by the ~~secretary~~ chair. Upon  
8 the expiration of a temporary emergency permit under this subsection, if any  
9 applicable permits have not been issued by the ~~secretary or the commissioner~~  
10 ~~of environmental conservation~~ department, the ~~secretary~~ department may seek  
11 enforcement under applicable law.

12 (d) The ~~secretary~~ council may adopt rules to implement the authority to  
13 issue expedited, temporary emergency permits specified in subsection (c) of  
14 this section and in subdivision 9(11) of Title 20.

15 (e) The ~~secretary~~ council, with the approval of the secretary of  
16 administration, may transfer any unexpended funds appropriated in a capital  
17 construction act to other projects authorized in the same section of that act.

18 (f) For any ~~agency~~ department program, the ~~secretary~~ council may provide  
19 for simplified application forms and procedures for minor projects.

20 (g) The ~~secretary~~ department shall make all practical efforts to process  
21 permits in a prompt manner. The ~~secretary~~ council shall establish time limits

1 for the processing of each permit as well as procedures and time periods within  
2 which to notify applicants whether an application is complete. The ~~secretary~~  
3 council shall report no later than the third Tuesday of each annual legislative  
4 session to the house and senate committees on natural resources and  
5 government operations. The annual report shall assess the ~~agency's~~  
6 department's performance in meeting the limits; identify areas which hinder  
7 effective ~~agency~~ department performance; list fees collected for each permit;  
8 summarize changes made by the ~~agency~~ department to improve performance;  
9 describe staffing needs for the coming year; and certify that the revenue from  
10 the fees collected is at least equal to the costs associated with those positions.  
11 This report is in addition to the fee report and request, required by subchapter 6  
12 of chapter 7 of Title 32.

13 (h) [Repealed.]

14 (i) The ~~secretary~~ department shall not process an application for which the  
15 applicable fee has not been paid unless the ~~secretary~~ department specifies that  
16 the fee may be paid at a different time or unless the person applying for the  
17 permit is exempt from the permit fee requirements pursuant to section 710 of  
18 Title 32. In addition, the persons who are exempt under section 710 of Title 32  
19 are also exempt from the application fees for stormwater operating permits  
20 specified in subdivisions (j)(2)(A)(iii)(I) and (II) of this section if they  
21 otherwise meet the requirements of section 710. Municipalities shall be

1 exempt from the payment of fees under this section except for those fees  
2 prescribed in subdivisions (j)(1), (2), (7), (8), (14), and (15) of this section for  
3 which a municipality may recover its costs by charging a user fee to those who  
4 use the permitted services, except that a municipality shall also be exempt from  
5 those fees for orphan stormwater systems prescribed in subdivisions  
6 (j)(2)(A)(iii) and (2)(B)(iv)(I) or (II) of this section when the municipality  
7 agrees to become an applicant or co-applicant for an orphan stormwater system  
8 under section 1264c of Title 10.

9 \* \* \*

10 (o) The council may delegate to the executive director the preparation of  
11 the budget and report required by subsection (a) of this section, provided that  
12 the budget and report shall be subject to the council's approval prior to  
13 submission to the governor or the general assembly. The council also may  
14 delegate to the executive director, in whole or in part, authorities of  
15 subsections (e) through (i) of this section.

16 Sec. 5. 3 V.S.A. § 2823 is amended to read:

17 § 2823. ~~EXECUTIVE ASSISTANTS; VACANCY~~

18 ~~(a) The secretary, with the approval of the governor, may appoint, outside~~  
19 ~~the classified service, an executive assistant to serve at his pleasure, or~~  
20 ~~designate the same from within the classified personnel of the. The executive~~  
21 ~~assistant shall perform such duties as the secretary prescribes.~~

1       ~~(b)~~ The secretary chair, with the approval of the ~~governor council~~, shall  
2 designate ~~his executive assistant or a commissioner~~ a member of the council to  
3 act in the event of a vacancy in the offices of both the chair and vice chair or in  
4 ~~his~~ the absence of both the chair and vice chair. The provisions of ~~subsections~~  
5 ~~(d) and (e) of section 253~~ subsection 253(d) of this title shall apply.

6 Sec. 6. 3 V.S.A. §§ 2824 and 2825 are amended to read:

7 § 2824. TRANSFER OF PERSONNEL AND APPROPRIATIONS

8       (a) The secretary council, with the approval of the governor, may transfer  
9 classified positions, ~~excepting fish and wildlife department positions~~, between  
10 ~~state departments and other~~ components of the agency department, subject only  
11 to personnel laws and rules.

12       (b) The secretary council, with the approval of the governor, may transfer  
13 appropriations or parts thereof between ~~departments and other~~ components in  
14 the agency department, consistent with the purposes for which the  
15 appropriations were made, ~~excepting fish and wildlife funds which shall~~  
16 ~~remain separate and intact~~.

17       (c) The council may delegate authorities of this section in whole or part to  
18 the executive director.

19 § 2825. DUTIES OF THE ~~SECRETARY~~ SECRETARY COUNCIL

20       (a) The primary duties of the secretary council are to ~~coordinate~~ discharge  
21 faithfully the rulemaking, appellate, and enforcement authorities conferred on



1 it by law, to provide overall direction and coordination of the activities of the  
2 various ~~departments and~~ divisions of the ~~agency~~ department for the proper  
3 development, management, and preservation of Vermont's natural resources,  
4 to develop policies for the proper and beneficial development, management,  
5 and preservation of resources in harmony with the state comprehensive  
6 planning program, and to promote the effective application of these policies by  
7 the ~~departments and~~ divisions affected.

8 (b) The secretary council, with approval of the governor, may direct the  
9 commissioner of finance and management to pay monies from the outdoor  
10 recreation land and water conservation fund to state agencies or to a  
11 municipality for recreational projects in accordance with the conditions of  
12 Public Law 88-578.

13 (c) The secretary council may enter into contracts and agreements with  
14 agencies of the United States and furnish to the agencies reports and  
15 information necessary to enable their officials to perform their duties under  
16 Public Law 88-578, and amendments thereto.

17 (d) The secretary council may delegate authorities and duties assigned to  
18 ~~him or her~~ it by statute, for the purpose of administering chapters 55 and 159  
19 of Title 10 and chapter 120 of Title 24.

20 (e) Before acquiring any interest in real property, the secretary department  
21 shall offer to the legislative body of the municipality in which the real property

1 is located the opportunity to meet, during which meeting the ~~secretary~~  
2 executive director or his or her designee shall describe the proposed acquisition  
3 and answer questions raised by town officials or the general public, including  
4 questions concerning the impact of the proposed acquisition on local tax  
5 revenues. The municipality may hold a ~~non-binding~~ nonbinding referendum  
6 on the proposed acquisition, either at the discretion of the legislative body of  
7 the municipality or upon petition signed by five percent of the legal voters of  
8 the municipality and presented to the legislative body. The ~~secretary~~ council  
9 shall consider the results of any such referendum in making a final decision on  
10 whether to acquire the property. The requirements of this section shall also  
11 apply to the departments of fish and wildlife and of forests, parks and  
12 recreation, except the opportunity to meet shall be with the commissioner of  
13 such department or his or her designee and the consideration of referendum  
14 results shall be made by the commissioner of such department.

15 (f) The council may delegate authorities of subsections (b) through (d) of  
16 this section in whole or part to the executive director.

17 Sec. 7. 3 V.S.A. § 2829 is added to read:

18 § 2829. PROCEDURE BEFORE DIVISIONS OF THE DEPARTMENT

19 (a) The council shall promulgate rules establishing notice and procedural  
20 requirements for applications reviewed and declaratory rulings issued by the  
21 department.

1           (1) Such rules shall impose requirements that are more stringent than the  
2 minimum required by statute for proposed projects that are substantial in scope  
3 or are likely to have substantial impact under the standards and criteria used in  
4 determining whether to approve the application.

5           (2) At a minimum, the rules shall divide application review before the  
6 department into three classes:

7           (A) Applications for which the minimum statutory requirements  
8 provide sufficient notice and procedures.

9           (B) Applications for which, in addition to minimum statutory  
10 requirements, notice should be provided to adjoining landowners.

11           (C) Applications which should be processed according to the  
12 contested case requirements of chapter 25 of this title, with the applicable  
13 division director or the director's designee serving as the decision-maker, and  
14 for which notice should be provided to adjoining landowners.

15           (b) For the purpose of this section, notice to adjoining landowners includes  
16 the provision of a list of adjoining landowners to the applicable division and  
17 the provision of personal notice to such landowners of any hearing, draft  
18 permit, or public comment period, by the applicable division, in accordance  
19 with the rules of the council. The rules shall provide that a division director  
20 may authorize waiver of personal notice to all or some adjoining landowners  
21 based on a determination that the landowners reasonably could not be affected

1 by the activity for which a permit or other approval is sought and that service  
2 to each and every landowner by the division would constitute a significant  
3 public burden without corresponding benefit.

4 (c) Notwithstanding any other provision of law, personal notice of a  
5 hearing, draft permit, or public comment period shall be provided by the  
6 department to any adjoining landowner who has requested such notice.

7 (d) Notwithstanding any other provision of law, notice to adjoining  
8 landowners in accordance with subsection (b) of this section shall be required  
9 for applications before a division of the department for each of the following,  
10 in addition to any other statutory notice requirements:

11 (1) An application for a potable water supply and wastewater permit  
12 under chapter 64 of Title 10 if either of the following apply:

13 (A) The water supply or wastewater system would serve, in whole or  
14 part, a project that involves the creation of five or more lots or residential units.

15 (B) The water supply or wastewater system is proposed to be placed  
16 within 50 feet of a property boundary or, in the case of a water supply system,  
17 property of an adjoining landowner would be within a zone around that system  
18 within which a wastewater system or other improvements could not be  
19 constructed.

20 (2) An application under 10 V.S.A. § 6605 for a solid waste  
21 management facility.

1       (e) Notwithstanding any other provision of law, applications before a  
2 division of the department for each of the following shall be conducted after at  
3 least 10 days' prior notice and opportunity for hearing in accordance with  
4 3 V.S.A. chapter 25, with the applicable division director or that director's  
5 designee serving as the decision-maker and notice provided to adjoining  
6 landowners pursuant to subsection (b) of this section:

7           (1) An application under 10 V.S.A. chapter 23 or rules adopted under  
8 that chapter for a construction or operating permit for a stationary source  
9 whose allowable emissions of any air contaminant are equal to or greater than  
10 50 tons per year or, in the case of lead, equal to or greater than five tons per  
11 year. This subdivision (1) shall not apply to a request for an individual  
12 approval of such a source under a general permit; however, notice to adjoining  
13 landowners of such a request shall be provided in accordance with subsection  
14 (b) of this section.

15           (2) An application for a discharge permit under 10 V.S.A. chapter 47 for  
16 a discharge from a wastewater treatment plant or a discharge of stormwater  
17 from a new development involving three or more acres of impervious surface.  
18 This subdivision (2) shall not apply to a request for an individual approval of  
19 such a stormwater discharge under a general permit; however, notice to  
20 adjoining landowners of such a request shall be provided in accordance with  
21 subsection (b) of this section.



1 § 2852. —MANDATORY AND DELEGATED DUTIES

2 (a) ~~The commissioner shall, with approval of the secretary determine the~~  
3 ~~policies of the department, and may exercise the powers and shall perform the~~  
4 ~~duties required for its effective administration.~~

5 ~~(b) In~~ Subject to the direction of the council and the administrative  
6 supervision of the chair, and in addition to other duties imposed by law, the  
7 ~~commissioner~~ executive director shall:

8 (1) ~~Administer the laws assigned to~~ Oversee and provide for the  
9 day-to-day administration of the department and the laws assigned to it.

10 (2) Coordinate and integrate the work of the divisions.

11 (3) Supervise and control all staff functions and have general charge of  
12 the offices and employees of the department, except for staff that the council  
13 may specifically assign to assist the council with quasi-judicial proceedings,  
14 which staff shall be supervised by the chair.

15 (4) Exercise all authorities that may be delegated to him or her by the  
16 council, subject to such conditions that the council may impose.

17 (b) Notwithstanding any other provision of law, the executive director shall  
18 not serve as chair or a member of the council, shall not convene or preside over  
19 a meeting of the council, and shall not function as an advisor to the council  
20 concerning a quasi-judicial or enforcement proceeding before the council.

1 § 2853. PERMISSIVE DUTIES; APPROVAL OF ~~SECRETARY~~ COUNCIL

2 The ~~commissioner~~ executive director, with the approval of the ~~secretary~~  
3 council, may within the department:

4 (1) Transfer appropriations or parts thereof within or between divisions  
5 and branches, consistent with the purposes for which the appropriations were  
6 made.

7 (2) Transfer classified positions within or between divisions subject only  
8 to state personnel laws and regulations.

9 (3) Cooperate with the appropriate federal agencies and administer  
10 federal funds in support of programs within the department.

11 (4) Submit plans and reports, and in other respects comply with federal  
12 law and regulations which pertain to programs administered by the department.

13 (5) ~~Make regulations consistent with law for the internal administration~~  
14 ~~of the department and its programs.~~

15 (6) ~~Appoint a deputy commissioner. The provisions of subsections (d)~~  
16 ~~and (e) of section 253 of this title shall apply.~~

17 (7) ~~Create such advisory councils or committees as he deems necessary~~  
18 ~~within the department, and appoint their members, for a term not exceeding~~  
19 ~~his.~~



1           (8) Provide training and instruction for any employees of the  
2 department, at the expense of the department, in educational institutions or  
3 other places.

4           (9)(6) Organize, reorganize, transfer, or abolish divisions, staff  
5 functions, or sections within the department. This authority shall not extend to  
6 divisions or other bodies created by law.

7 § 2854. DIRECTORS

8           (a) A director shall administer each division within the ~~agency~~ department.  
9 The ~~commissioners~~ executive director, with the approval of the ~~secretary~~ chair,  
10 shall appoint the directors for divisions which are part of a the department, ~~and~~  
11 ~~the secretary shall appoint any other directors. All directors shall be appointed~~  
12 ~~subject to the provisions of section 15 of this act~~ except that the director of  
13 environmental enforcement shall be appointed by the council.

14           (b) Each division and its officers shall be under the overall direction of the  
15 council and subject to the day-to-day supervision and control of the  
16 ~~commissioner or the secretary, except with regard to judicial or quasi-judicial~~  
17 ~~acts or duties vested in them by law~~ executive director.

18           (c) No regulation may be issued by a director of a division without the  
19 approval of the ~~commissioner or his designee and the secretary~~ council.

1 Sec. 10. 3 V.S.A. §§ 2871 and 2872 are amended to read:

2 § 2871. DEPARTMENT OF FISH AND WILDLIFE

3 (a) The department of fish and wildlife is reconstituted ~~within the agency of~~  
4 ~~natural resources~~ as the successor to and the continuation of the department of  
5 fish and wildlife. The department of fish and wildlife shall be under the  
6 direction and supervision of a commissioner, who shall be appointed by the  
7 governor with the advice and consent of the senate and shall serve at the  
8 pleasure of the governor. Fish and wildlife funds shall be used only for the  
9 purposes of the department.

10 (b) The fish and wildlife board shall retain and exercise all powers and  
11 functions given to it by law which are of regulatory or quasi-judicial nature,  
12 including the power to adopt, amend, and repeal rules and regulations, to  
13 conduct hearings, to adjudicate controversies and to issue and enforce orders,  
14 in the manner and to the extent to which those powers are given to that board  
15 by law.

16 (c) The department of fish and wildlife is attached to the department of  
17 environmental quality for the purpose of receiving administrative support.

18 (d) The following shall apply to the commissioner of the department of fish  
19 and wildlife:

1           (1) The commissioner shall determine the policies of the department of  
2 fish and wildlife, and may exercise the powers and shall perform the duties  
3 required for its effective administration.

4           (2) In addition to other duties imposed by law, the commissioner shall:

5           (A) Administer the laws assigned to the department of fish and  
6 wildlife.

7           (B) Coordinate and integrate the work of the divisions.

8           (C) Supervise and control all staff functions.

9   § 2872. DEPARTMENT OF FORESTS, PARKS AND RECREATION

10   (a) The department of forests, parks, and recreation is reconstituted within  
11 the agency of natural resources as the successor to and the continuation of the  
12 department of forests and parks and the division of recreation; including the  
13 board of forests, parks and recreation with jurisdiction over Camel's Hump  
14 forest reserve commission, northeast forest fire protection commission, and the  
15 forest resource advisory council. The department of forests, parks and  
16 recreation shall be under the direction and supervision of a commissioner, who  
17 shall be appointed by the governor with the advice and consent of the senate  
18 and shall serve at the pleasure of the governor.

19   (b) The department of forests, parks and recreation is attached to the  
20 department of environmental quality for the purpose of receiving  
21 administrative support. The department of forests, parks and recreation shall

1 provide support to the departments of environmental quality and of fish and  
2 wildlife with respect to the acquisition and management of lands owned or  
3 controlled by those departments.

4 (c) The following shall apply to the commissioner of the department of  
5 forests, parks and recreation:

6 (1) The commissioner shall determine the policies of the department of  
7 forests, parks and recreation, and may exercise the powers and shall perform  
8 the duties required for its effective administration.

9 (2) In addition to other duties imposed by law, the commissioner shall:

10 (A) Administer the laws assigned to the department of forests, parks  
11 and recreation.

12 (B) Coordinate and integrate the work of the divisions.

13 (C) Supervise and control all staff functions.

14 Sec. 11. 3 V.S.A. § 2872a is added to read:

15 § 2872a. PERMISSIVE DUTIES; APPROVAL OF GOVERNOR

16 The commissioners of fish and wildlife and of forests, parks and recreation,  
17 with the approval of the governor, may within their respective departments:

18 (1) Transfer appropriations or parts thereof within or between divisions  
19 and branches, consistent with the purposes for which the appropriations were  
20 made.

1           (2) Transfer classified positions within or between divisions subject only  
2 to state personnel laws and regulations.

3           (3) Cooperate with the appropriate federal agencies and administer  
4 federal funds in support of programs within the department.

5           (4) Submit plans and reports, and in other respects comply with federal  
6 law and regulations which pertain to programs administered by the department.

7           (5) Make regulations consistent with law for the internal administration  
8 of the department and its programs.

9           (6) Appoint a deputy commissioner. The provisions of subsections  
10 253(d) and (e) of this title shall apply.

11           (7) Create such advisory councils or committees as he or she deems  
12 necessary within the department, and appoint their members, for a term not  
13 exceeding his or hers.

14           (8) Provide training and instruction for any employees of the  
15 department, at the expense of the department, in educational institutions or  
16 other places.

17           (9) Organize, reorganize, transfer, or abolish divisions, staff functions,  
18 or sections within the department. This authority shall not extend to divisions  
19 or other bodies created by law.

1 Sec. 12. 3 V.S.A. § 2873 is amended to read:

2 § 2873. DEPARTMENT OF ENVIRONMENTAL ~~CONSERVATION~~

3 QUALITY

4 (a) The department of environmental ~~conservation is created within the~~  
5 ~~agency of natural resources. The department~~ quality is the successor to and  
6 continuation of the ~~department~~ departments of environmental conservation and  
7 of water resources and environmental engineering and of the natural resources  
8 board, and shall administer the water resources programs contained in Title 10;  
9 air pollution control and abatement as provided in chapter 23 of Title 10; state  
10 land use and development as provided in chapter 151 of Title 10; waste  
11 disposal as provided in chapter 159 of Title 10; and subdivision and trailer and  
12 tent sites ~~as provided in subsection (c) of this section.~~

13 (b) The department shall perform design and construction supervision  
14 services for major maintenance and capital construction projects for the ~~agency~~  
15 ~~and all of its components~~ departments of fish and wildlife and forests, parks  
16 and recreation and itself.

17 \* \* \*

18 (e) There is created within the department of environmental ~~conservation~~  
19 quality a division of pollution prevention, which shall carry out nonregulatory  
20 functions of the department under 10 V.S.A. chapter 159, subchapter 2, in  
21 providing technical assistance and coordinating state efforts to bring about a

1 decrease, within the state, in the use of toxics and the generation of hazardous  
2 wastes. The office shall:

3 \* \* \*

4 (f) There is created a toxics technical advisory board, that is attached to the  
5 division of pollution prevention.

6 (1) The toxics technical advisory board shall consist of at least five  
7 members appointed by the ~~governor~~ executive director with the approval of the  
8 environmental council, representing the various geographic areas of the state  
9 and with expertise in professional disciplines such as occupational health and  
10 safety, industrial hygiene, engineering, chemistry, manufacturing, business,  
11 ecology and environmental protection. Members shall be selected from  
12 business and industry groups that are to be served by technical assistance.

13 \* \* \*

14 Sec. 13. 3 V.S.A. §§ 2876, 2877, and 2879 are amended to read:

15 § 2876. ADMINISTRATIVE SERVICES DIVISION

16 (a) The administrative services division ~~of the agency~~ is created within the  
17 department of environmental quality. It shall be administered by a director of  
18 administrative services who shall be in the classified service.

19 (b) The administrative services division shall provide the following  
20 services to the ~~agency~~ department and all its components, including

1 components assigned to it for administration, and to the departments of fish  
2 and wildlife and of forests, parks and recreation:

3 (1) Personnel administration;

4 (2) Coordination of financing and accounting activities;

5 (3) Coordination of filing and records maintenance activities;

6 (4) Provision of facilities, office space, and equipment and the care  
7 thereof;

8 (5) Requisitioning from the department of buildings and general services  
9 of the agency of administration, of supplies, equipment, and other  
10 requirements;

11 (6) Management improvement services; and

12 (7) Other administrative functions assigned to it by the ~~secretary~~  
13 executive director with the approval of the council.

14 (c) Other provisions of law notwithstanding, all administrative service  
15 functions delegated to other components of the ~~agency~~ departments to which it  
16 provides services shall be performed ~~within the agency~~ for those departments  
17 by the administrative services division.

18 § 2877. PLANNING DIVISION

19 (a) The planning division ~~of the agency~~ is created within the department of  
20 environmental quality. It shall be administered by a director of planning.

21 (b) The planning division shall be responsible for:



1 (1) Centralized strategic planning for all components of the ~~agency~~  
2 department.

3 (2) Coordination of professional and technical planning of the line  
4 components of the ~~agency~~ department, aiming towards maximum service to the  
5 public.

6 (3) Coordinating activities and plans of the ~~agency~~ department with  
7 other major agencies and the governor's office.

8 (4) Preparing multi-year plans and long-range plans and programs to  
9 meet problems and opportunities for service to the public.

10 (5) Preparing a municipal planning and land use manual in accordance  
11 with section 4304 of Title 24.

12 (6) Providing technical assistance and training to municipal  
13 commissions and boards regarding the development, administration, and  
14 enforcement of municipal land use bylaws. In collaboration with the regional  
15 commissions and the Vermont League of Cities and Towns, Inc., the planning  
16 division shall develop a municipal commission and board training program to  
17 foster fair and consistent regulatory review of such commissions and boards.

18 (7) Providing assistance to the Vermont downtown development board  
19 in accordance with 24 V.S.A. § 2792.

20 (8) Coordinating the provision to the Vermont center for geographic  
21 information of data known to or maintained by the department that is relevant

1 to applications for permits, certificates, or other approvals under the statutes  
2 administered by the department and 24 V.S.A. chapter 117, ensuring that such  
3 provision occurs in a manner that is timely and includes the most current data  
4 available, and working with the center to ensure that it produces and maintains  
5 geographic information service map layers that contain such data.

6 (9) Other planning functions assigned to it by the ~~secretary~~ council.

7 § 2879. DIVISION OF GEOLOGY AND MINERAL RESOURCES

8 The division of geology and mineral resources is created within the  
9 department of environmental quality. It shall be administered by a director  
10 who shall be the state geologist.

11 Sec. 14. 3 V.S.A. § 2880 is added to read:

12 § 2880. DIVISION OF ENVIRONMENTAL ENFORCEMENT

13 The division of environmental enforcement is created within the department  
14 of environmental quality. It shall be administered by the director of  
15 environmental enforcement who shall be appointed by the environmental  
16 council. The director shall have authority to execute assurances of  
17 discontinuance and issue administrative orders in accordance with chapter 201  
18 of Title 10, to petition the council for revocation of a permit, certificate, or  
19 other approval issued by the department, and to refer matters to the attorney  
20 general for civil enforcement on behalf of the department under chapter 211 of  
21 Title 10.

1 Sec. 15. 3 V.S.A. § 2881 is added to read:

2 § 2881. OFFICE OF ENVIRONMENTAL COUNSEL

3 The office of environmental counsel is created within the department. The  
4 office shall be a division of the department administered by the chief  
5 environmental counsel. The office shall include all department attorneys who  
6 advise and work with the regulatory divisions of the department and those  
7 attorneys who appear before the council on appeals of department acts and  
8 decisions under section 8504 of Title 10. The office shall advocate before the  
9 council in support of the protection of the environment in accordance with the  
10 statutes and regulations administered by the department. The office shall not  
11 include counsel to the council appointed and employed under section 2887 of  
12 this title.

13 \* \* \* Quasi-Judicial Proceedings before Environmental Council \* \* \*

14 Sec. 16. 3 V.S.A. chapter 51, subchapter 5 is added to read:

15 Subchapter 5. Quasi-Judicial Proceedings; Environmental Council

16 § 2885. POWERS; PROCESS; REVOCATION

17 (a) The council shall have the powers of a court of record in the  
18 determination and adjudication of all requests for hearing under chapter 201 of  
19 Title 10, all appeals of all actions or decisions as provided in chapter 220 of  
20 Title 10, and petitions for revocation under subsection (j) of this section. It

1 may render judgments and enforce the same by any suitable process issuable  
2 by courts in this state.

3 (b) All processes issued by the council shall state the time and place of  
4 return in those cases where return is to be made to the council. Notices and  
5 other processes issued by the council shall be served personally or by first class  
6 mail, except that the council may direct that service be made by registered or  
7 certified mail. If the whereabouts of a person are unknown or if the number of  
8 parties or interested persons, as the case may be, is so great that personal  
9 service or service by mail is impracticable, service may be made by  
10 publication.

11 (c) Except as provided in subsections (d) and (e) of this section, the council  
12 shall give 12 days' notice of all hearings.

13 (d) A prehearing or procedural conference may be held upon any  
14 reasonable notice.

15 (e) An evidentiary hearing, once commenced upon proper notice, may be  
16 continued to a subsequent date upon any reasonable notice.

17 (f) The forms, pleadings, and rules of practice and procedure before the  
18 council shall be prescribed by it.

19 (g) The council shall hear all requests for hearing under chapter 201 of  
20 Title 10, all appeals on all acts or decisions specified in chapter 220 of  
21 Title 10, and all petitions for revocation under subsection (j) of this section and

1 make its findings of fact and rulings of law. Upon appeal to the supreme court,  
2 the council's findings of fact, if supported by substantial evidence on the  
3 record as a whole, shall be conclusive.

4 (h) A quasi-judicial proceeding before the council shall be deemed  
5 completed when the council enters a final decision, even though that decision  
6 is appealed to the supreme court and remanded by that court.

7 (i) When a council member who hears all or a substantial part of a quasi-  
8 judicial proceeding retires from office before the proceeding is completed, he  
9 or she shall remain a member of the council for the purpose of concluding and  
10 deciding that proceeding, and signing the findings and judgments involved. A  
11 retiring chair shall also remain a member for the purpose of certifying  
12 questions of law if a party appeals to the supreme court.

13 (j) After notice and opportunity for hearing, the council may revoke any  
14 permit, certificate, or other approval granted by the department. Grounds for  
15 revocation include:

16 (1) noncompliance with a statute administered by the department, rules  
17 adopted under such a statute, or an order that is issued that relates to such a  
18 statute;

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

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

- 1           (4) misrepresentation of any relevant and material fact at any time; and  
2           (5) failure to pay a penalty or other sums owed pursuant to, or other  
3 failure to comply with, court order, stipulation agreement, schedule of  
4 compliance, or other order issued under Vermont statutes and related to a  
5 permit issued by the department.

6           § 2886. POWERS OF SINGLE COUNCIL MEMBER OR OTHER OFFICER

7           OR EMPLOYEE

- 8           (a) One council member or any officer or employee of the council or  
9 department duly appointed by the chair of the council may inquire into and  
10 examine any matter within the jurisdiction of the council, except that the  
11 following may not serve as a hearing officer:

12           (1) the executive director;

13           (2) the director of environmental enforcement;

14           (3) with respect to an appeal under chapter 220 of Title 10, the director  
15 or any employee of the division issuing the decision or taking the action that is  
16 on appeal;

17           (4) with respect to a request for hearing under chapter 201 of Title 10 or  
18 a petition for revocation, any employee of the environmental enforcement  
19 division and any director or employee of a division that administers a statute,  
20 regulation, or permit that is the subject of the request for hearing or petition for  
21 revocation; and

1           (5) any other officer or employee of the department whose participation  
2 as a hearing officer would be a conflict of interest or would cause a reasonable  
3 person to lose confidence in the integrity of the council's quasi-judicial  
4 process, in accordance with the rules of the council.

5           (b) A hearing officer may administer oaths in all cases, so far as the  
6 exercise of that power is properly incidental to the performance of his or her  
7 duty or that of the council. A hearing officer may hold any hearing in any  
8 matter within the jurisdiction of the council. Hearings conducted by a hearing  
9 officer shall be in accordance with chapter 25 of this title.

10          (c) A hearing officer shall report his or her findings of fact in writing to the  
11 council in the form of a proposal for decision. A copy shall be served upon the  
12 parties pursuant to section 811 of this title. However, judgment on those  
13 findings shall be rendered only by a majority of the council.

14          (d) At least 12 days prior to a hearing before the council or a hearing  
15 officer, the council shall give written notice of the time and place of the  
16 hearing to all parties to the case and shall indicate the name and title of the  
17 person designated to conduct the hearing.

18          (e) Upon written request to the council at least five days prior to the  
19 hearing by all parties to the case, the chair shall appoint at least a majority of  
20 the council to conduct the hearing.

1       (f) Notwithstanding subsection (c) of this section, the chair may appoint a  
2 hearing officer to hear and finally determine any appeal under chapter 220 of  
3 Title 10. Upon petition of a party, filed within 30 days of issuance of the  
4 hearing officer's decision, or on its own motion, the council may determine  
5 that the hearing officer's decision should be treated as a proposal for decision  
6 and order as provided in subsection (c) of this section. The council may grant  
7 such request for good cause, including apparent error of fact or procedural or  
8 substantive law, and may conduct additional evidentiary hearings or hear oral  
9 argument from the parties. If such request is not timely made or is not granted  
10 by the council, the decision and order of the hearing officer shall become the  
11 final decision of the council.

12       § 2887. EXPERTS AND PERSONNEL

13       (a) With the approval of the governor, the council may appoint and employ,  
14 at the expense of the state, legal counsel, scientists, engineers, and such  
15 number of experts, clerks, stenographers, and temporary employees as it deems  
16 necessary in the performance of its quasi-judicial functions. Such personnel  
17 shall be subject to the direct supervision of the chair and not the executive  
18 director.

19       (b) Notwithstanding the requirement for approval of the governor under  
20 subsection (a) of this section, the council shall appoint and employ, at the  
21 expense of the state, at least one attorney to be its counsel and at least two



1 scientists with qualifications appropriate to the matters within the council's  
2 rulemaking and quasi-judicial authority to serve as staff and advisors to the  
3 council.

4 (c) Employees retained under this section shall not be part of the office of  
5 environmental counsel or division of environmental enforcement.

6 § 2888. PARTICULAR PROCEEDINGS; PERSONNEL

7 (a)(1) The council may authorize or retain legal counsel, stenographers,  
8 expert witnesses, advisors, temporary employees, and other research services:

9 (A) to assist the council on any request for hearing under chapter 201  
10 of Title 10, on any appeal under chapter 220 of Title 10, or on any petition for  
11 revocation;

12 (B) to monitor compliance with any decision of the council issued in  
13 a quasi-judicial capacity;

14 (C) to assist other state agencies that are named parties to a  
15 quasi-judicial proceeding before the council when the council determines that  
16 they are essential to a full consideration of the matter; and

17 (2) The personnel authorized by this section shall be in addition to the  
18 regular personnel of the council or other state agencies; and in the case of other  
19 state agencies, may be retained only with the approval of the governor and  
20 after notice to the applicant. The council shall fix the amount of compensation  
21 and expenses to be paid such additional personnel.

1       (b) Persons employed by the state are competent to be designated to act for  
2 the same purposes and in lieu of or in conjunction with additional personnel  
3 retained under this section. However, when so acting, they shall not receive  
4 compensation in addition to their regular pay.

5       § 2889. ASSESSMENT OF COSTS

6       (a) The council may allocate to an applicant the portion of its expenses  
7 incurred by retaining additional personnel for a proceeding. On petition of an  
8 applicant to which costs are proposed to be allocated, the council shall review  
9 and determine, after opportunity for hearing, the necessity and reasonableness  
10 of those costs, having due regard for the size and complexity of the project,  
11 and may amend or revise an allocation. Prior to allocating costs, the council  
12 shall make a determination of the purpose and use of the funds to be raised  
13 under this section, identify the recipient of the funds, provide for the allocation  
14 of costs among applicants to be assessed, indicate an estimated duration of the  
15 proceedings, and estimate the total costs to be imposed. With the approval of  
16 the council, estimates may be revised as necessary. From time to time during  
17 the progress of the work, the council shall render to the applicant detailed  
18 statements showing the amount of money expended or contracted for in the  
19 work of additional personnel, which statements shall be paid into the state  
20 treasury at the time and in the manner as the council may reasonably direct.

1       (b) When regular employees of the department are employed in  
2 quasi-judicial proceedings before the council, the council may also allocate the  
3 portion of their costs and expenses to the applicant or applicants involved in  
4 the proceedings. The costs of regular employees shall be computed on the  
5 basis of working days within the salary period. The manner of assessment and  
6 making payments shall otherwise be as provided for additional personnel in  
7 subsection (a) of this section.

8       (c) All payments for costs allocated pursuant to this section shall be  
9 deposited into the fund created under section 6029 of Title 10.

10                               \* \* \* Act 250 Provisions \* \* \*

11       Sec. 17. 10 V.S.A. § 6001 is amended to read:

12       § 6001. DEFINITIONS

13       When used in this chapter:

14       (1) ~~“Board”~~ “Council” means the ~~natural resources board~~ environmental  
15 council created under chapter 51 of Title 3.

16                               \* \* \*

17       (19) “Subdivision” means a tract or tracts of land, owned or controlled  
18 by a person, which the person has partitioned or divided for the purpose of  
19 resale into 10 or more lots within a radius of five miles of any point on any lot,  
20 or within the jurisdictional area of the same district commission, within any  
21 continuous period of five years. In determining the number of lots, a lot shall

1 be counted if any portion is within five miles or within the jurisdictional area  
2 of the same district commission. The word “subdivision” shall not include a  
3 lot or lots created for the purpose of conveyance to the state or to a qualified  
4 organization, as defined under section 6301a of this title, if the land to be  
5 transferred includes and will preserve a segment of the Long Trail. The word  
6 “subdivision” shall not include a lot or lots created for the purpose of  
7 conveyance to the state or to a “qualified holder” of “conservation rights and  
8 interest,” as those terms are defined in section 821 of this title. “Subdivision”  
9 shall also mean a tract or tracts of land, owned or controlled by a person, which  
10 the person has partitioned or divided for the purpose of resale into ~~six~~ three or  
11 more lots, within a continuous period of five years, in a municipality which  
12 does not ~~have duly adopted permanent zoning and subdivision bylaws~~ contain  
13 a designated downtown development district, designated village center,  
14 designated new town center, or designated growth center under 24 V.S.A.  
15 chapter 76A.

16 \* \* \*

17 (31) “Department” means the department of environmental quality  
18 created under chapter 51 of Title 3, except when used as part of “health  
19 department” or the full name of another department of state government.

20 (32) For the purpose of this chapter, “interested person” means each of  
21 the following:

1           (A) A person owning or occupying property in the immediate  
2 neighborhood of a property that is the subject of any decision or act taken  
3 under this chapter, who can demonstrate an impact on the person's interest  
4 under the criteria of subsection 6086(a) of this title, and who alleges that the  
5 development or subdivision will not comply with one or more of the criteria  
6 under which the person's interest is affected.

7           (B) Any ten persons who may be any combination of voters or real  
8 property owners within a municipality described in subdivision 6085(c)(1)(C)  
9 of this title who, by signed petition to the district commission, allege that any  
10 relief requested by a person under this title, if granted, will not be in accord  
11 with one or more criteria of subsection 6086(a) of this title. This petition to a  
12 district commission must designate one person to serve as the representative of  
13 the petitioners regarding all matters related to the application.

14 Sec. 18. 10 V.S.A. § 6007(c) is amended to read:

15       (c) With respect to the partition or division of land, or with respect to an  
16 activity which might or might not constitute development, any person,  
17 including the department of environmental quality's director of environmental  
18 enforcement may submit to the district coordinator an "Act 250 Disclosure  
19 Statement" and other information required by the rules of the ~~board~~ council,  
20 and may request a jurisdictional opinion from the district coordinator  
21 concerning the applicability of this chapter. If a requestor wishes a final

1 determination to be rendered on the question, the district coordinator, at the  
2 expense of the requestor and in accordance with rules of the ~~board~~ council  
3 shall publish notice of the issuance of the opinion in a local newspaper  
4 generally circulating in the area where the land which is the subject of the  
5 opinion is located, and shall serve the opinion on all persons listed in  
6 subdivisions 6085(c)(1)(A) through (D) of this title. In addition, the requestor  
7 who is seeking a final determination shall consult with the district coordinator  
8 and obtain approval of a subdivision 6085(c)(1)(E) list of persons who shall be  
9 notified by the district coordinator because they are adjoining property owners  
10 or other persons who would be likely to be able to demonstrate ~~a particularized~~  
11 ~~interest protected by this chapter that may be affected by an act or decision by~~  
12 ~~a district commission, if an application were required under this chapter, that~~  
13 they constitute interested persons. A jurisdictional opinion of a district  
14 coordinator shall be subject to a request for reconsideration in accordance with  
15 rules of the ~~board~~ council and may be appealed ~~to the environmental court~~  
16 pursuant to chapter 220 of this title.

17 Sec. 19. 10 V.S.A. § 6021 is amended to read:

18 § 6021. ~~BOARD; VACANCY; REMOVAL~~ COMMISSIONS;

19 DISQUALIFICATION, INABILITY TO SERVE

20 (a) ~~A natural resources board is created with a land use panel and a water~~  
21 ~~resources panel. The board shall consist of nine members appointed by the~~

1 ~~governor, with the advice and consent of the senate, so that one appointment~~  
2 ~~on each panel expires in each odd-numbered year. In making appointments,~~  
3 ~~the governor and the senate shall give consideration to experience, expertise, or~~  
4 ~~skills relating to the environment or land use. The governor shall appoint a~~  
5 ~~chair of the board, a position that shall be a full-time position. The other eight~~  
6 ~~members shall be appointed by the governor, four to the water resources panel~~  
7 ~~of the board and four others to the land use panel of the board. The chair shall~~  
8 ~~serve as chair on each panel of the board. Following initial appointments, the~~  
9 ~~members, except for the chair, shall be appointed for terms of four years. The~~  
10 ~~governor shall appoint up to five persons, with preference given to former~~  
11 ~~environmental board, water resources board, natural resources board or district~~  
12 ~~commission members, with the advice and consent of the senate, to serve as~~  
13 ~~alternates for board members. Alternates shall be appointed for terms of four~~  
14 ~~years, with initial appointments being staggered. The board chair may assign~~  
15 ~~alternates to sit on specific matters before the panels of the board, in situations~~  
16 ~~where fewer than five panel members are available to serve. No person who~~  
17 ~~receives or, during the previous two years, has received a significant portion of~~  
18 ~~the person's income directly or indirectly from permit holders or applicants for~~  
19 ~~one or more permits under chapter 47 of this title may be a member of the~~  
20 ~~water resources panel.~~

1       ~~(b) Any vacancy occurring in the membership of the board shall be filled~~  
2 ~~by the governor for the unexpired portion of the term.~~

3       ~~(c) Notwithstanding the provisions of 3 V.S.A. § 2004, members shall be~~  
4 ~~removable for cause only, except the chair, who shall serve at the pleasure of~~  
5 ~~the governor.~~

6       ~~(d) The chair of the council~~, upon request of the chair of a district  
7 commission, may appoint and assign former commission members to sit on  
8 specific commission cases when some or all of the regular members and  
9 alternates are disqualified or otherwise unable to serve.

10    Sec. 20. REPEAL

11       10 V.S.A. §§ 6022 (personnel) and 6024 (intragovernmental cooperation)  
12 are repealed.

13    Sec. 21. 10 V.S.A. § 6025 is amended to read:

14    § 6025. RULES

15       (a) The ~~board~~ council may adopt rules of procedure for ~~the panels~~, the  
16 district commissions, and the ~~board~~ council itself.

17       (b) The ~~land use panel~~ council may adopt substantive rules, in accordance  
18 with the provisions of chapter 25 of Title 3, that interpret and carry out the  
19 provisions of this chapter that pertain to land use regulated under section 6086  
20 of this title. These rules shall include provisions that establish criteria under  
21 which applications for permits under this chapter may be classified in terms of



1 complexity and significance of impact under the standards of subsection  
2 6086(a) of this chapter. In accordance with that classification the rules may:

3 \* \* \*

4 (d) The ~~water resources panel~~ council may adopt rules, in accordance with  
5 the provisions of chapter 25 of Title 3, in the following areas:

6 \* \* \*

7 ~~(e) Except for subsection (a) of this section, references to rules adopted by~~  
8 ~~the board shall be construed to mean rules adopted by the appropriate panel of~~  
9 ~~the board, as established by this section.~~

10 Sec. 22. 10 V.S.A. § 6027 is amended to read:

11 § 6027. POWERS

12 (a) The ~~panels of the board~~ council and district commissions each shall  
13 have the power, with respect to any matter within its jurisdiction, to:

14 \* \* \*

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

20 \* \* \*

1 (e) The ~~land use panel~~ council may by rule allow joint hearings to be  
2 conducted with specified state agencies or specified municipalities.

3 (f) The ~~board~~ council may publish or contract to publish annotations and  
4 indices of ~~the its~~ decisions ~~of the environmental court~~, and the text of those  
5 decisions. The published product shall be available at a reasonable rate to the  
6 general public and at a reduced rate to libraries and governmental bodies  
7 within the state.

8 (g) The ~~land use panel~~ council shall manage the process by which land use  
9 permits are issued under section 6086 of this title.

10 (h) The department of environmental quality's director of environmental  
11 enforcement may initiate enforcement on ~~related~~ matters related to this chapter,  
12 under the provisions of ~~chapter~~ chapters 201 and 211 of this title, and may  
13 petition the environmental ~~court~~ council for revocation of land use permits  
14 issued under this chapter. Grounds for revocation are:

15 \* \* \*

16 (h) ~~The land use panel may hear appeals of fee refund requests under~~  
17 ~~section 6083a of this title.~~

18 (i) ~~The chair of the board, subject to the direction of the board, shall have~~  
19 ~~general charge of the offices and employees of the board and the offices and~~  
20 ~~employees of the district commissions.~~

1       ~~(j) The land use panel may participate as a party in all matters before the~~  
2 ~~environmental court that relate to land use permits issued under this chapter.~~

3       ~~(k) The water resources panel may participate as a party in all matters~~  
4 ~~before the environmental court that relate to rules adopted by the panel under~~  
5 ~~the authority of section 6025 of this title.~~

6       ~~(i)~~(i) A district commission may reject an application under this chapter  
7 that misrepresents any material fact and may after notice and opportunity for  
8 hearing award reasonable attorney's fees and costs to any party or person who  
9 may have become a party but for the false or misleading information or who  
10 has incurred attorney's fees or costs in connection with the application.

11 Sec. 23. 10 V.S.A. § 6028 is amended to read:

12 § 6028. COMPENSATION

13 Members of the ~~board and~~ district commissions shall receive per diem pay  
14 and all necessary and actual expenses in accordance with 32 V.S.A. § 1010.

15 Sec. 24. 10 V.S.A. § 6029 is amended to read:

16 § 6029. ACT 250 PERMIT FUND

17 There is hereby established a special fund to be known as the Act 250  
18 permit fund for the purposes of implementing the provisions of this chapter  
19 and chapter 220 of this title. Revenues to the fund shall be those fees collected  
20 in accordance with ~~section~~ sections 6025(b)(1)–(3) and 6083a of this title,  
21 gifts, appropriations, and copying and distribution fees. Revenues to the fund

1 shall also include those fees and costs collected under chapter 220 of this title.  
2 The ~~board~~ council shall be responsible for the fund and shall account for  
3 revenues and expenditures of the ~~board~~ council. At the commissioner's  
4 discretion, the commissioner of finance and management may anticipate  
5 amounts to be collected and may issue warrants based thereon for the purposes  
6 of this section. Disbursements from the fund shall be made through the annual  
7 appropriations process to the ~~board, and to the agency of natural resources~~  
8 department of environmental quality to support the council, the district  
9 coordinators and district commissions under this chapter, and those other  
10 programs within the ~~agency~~ department that directly or indirectly assist in the  
11 review of Act 250 applications or proceedings before the council. This fund  
12 shall be administered as provided in subchapter 5 of chapter 7 of Title 32.

13 Sec. 25. 10 V.S.A. § 6083 is amended to read:

14 § 6083. APPLICATIONS

15 \* \* \*

16 (b) An applicant or petitioner shall grant the ~~appropriate panel of the board~~  
17 council, department, or district commission, or their agents, permission to enter  
18 upon the applicant's or petitioner's land for these purposes.

19 \* \* \*

20 (d) The ~~panels of the board~~ council and commissions shall make all  
21 practical efforts to process matters before ~~the board and permits them~~ them in a

1 prompt manner. The ~~land-use panel~~ council shall establish time limits for the  
2 processing of land use permits issued under section 6086 of this title as well as  
3 procedures and time periods within which to notify applicants whether an  
4 application is complete. The ~~land-use panel~~ council shall report annually by  
5 February 15 to the house and senate committees on natural resources and  
6 energy and on government operations, and the house committee on fish,  
7 wildlife and water resources. The annual report shall assess the performance  
8 of the ~~board~~ council and commissions in meeting the limits; identify areas  
9 which hinder effective performance; list fees collected for each permit;  
10 summarize changes made to improve performance; and describe staffing needs  
11 for the coming year. The annual report shall list the number of enforcement  
12 actions taken by the ~~land-use panel~~ council, the disposition of such cases, and  
13 the amount of penalties collected.

14 \* \* \*

15 (g)(1) A district commission, pending resolution of noncompliance, may  
16 stay the issuance of a permit or amendment if it finds, by clear and convincing  
17 evidence, that a person who is an applicant:

18 \* \* \*

19 (2) ~~Any decision under this subsection to issue a stay may be subject to~~  
20 ~~review by the environmental court, as provided by rule of the supreme court.~~

1           (3) If the same violation is the subject of an enforcement action under  
2 chapter 201 of this title, then jurisdiction over the issuance of a stay shall  
3 remain with the environmental ~~court~~ council and shall not reside with the  
4 district commission.

5 Sec. 26. 10 V.S.A. § 6085 is amended to read:

6 § 6085. HEARINGS; PARTY STATUS

7           (a), (b) [Deleted.]

8           (c)(1) Party status. In proceedings before the district commissions, the  
9 following persons shall be entitled to party status:

10           (A) The applicant;

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

12           (C) The municipality in which the project site is located, and the  
13 municipal and regional planning commissions for that municipality; if the  
14 project site is located on a boundary, any Vermont municipality adjacent to  
15 that border and the municipal and regional planning commissions for that  
16 municipality; and the solid waste management district in which the land is  
17 located, if the development or subdivision constitutes a facility pursuant to  
18 subdivision 6602(10) of this title;

19           (D) Any state agency affected by the proposed project;

1           (E) Any ~~adjoining property owner or other~~ interested person who has  
2   a ~~particularized interest protected by this chapter that may be affected by an act~~  
3   ~~or decision by a district commission.~~

4   \* \* \*

5           (e) The ~~land use panel~~ council and any district commission, acting through  
6   one or more duly authorized representatives at any prehearing conference or at  
7   any other times deemed appropriate by the ~~land use panel~~ council or by the  
8   district commission, shall promote expeditious, informal, and nonadversarial  
9   resolution of issues, require the timely exchange of information concerning the  
10  application, and encourage participants to settle differences. No district  
11  commissioner, council member, or employee of the department of  
12  environmental quality who is participating as a ~~decisionmaker~~ decision-maker  
13  or hearing officer in a particular case may act as a duly authorized  
14  representative for the purposes of this subsection. These efforts at dispute  
15  resolution shall not affect the burden of proof on issues before a commission or  
16  the environmental court, nor shall they affect the requirement that a permit  
17  may be issued only after the issuance of affirmative findings under the criteria  
18  established in section 6086 of this title.

1 Sec. 27. 10 V.S.A. § 6086 is amended to read:

2 § 6086. ISSUANCE OF PERMIT; CONDITIONS AND CRITERIA

3 (a) Before granting a permit, the district commission or council shall find  
4 that the subdivision or development:

5 \* \* \*

6 (d) The ~~land use panel~~ council may by rule allow the acceptance of a  
7 permit or permits or approval of any state agency other than the department  
8 with respect to subdivisions ~~(1) through (5) of subsection (a)~~ (a)(1)–(5) of this  
9 section or a permit or permits of a specified municipal government with  
10 respect to subdivisions (1) through (7) and (9) and (10) of subsection (a), or a  
11 combination of such permits or approvals, in lieu of evidence by the applicant.  
12 A district commission, in accordance with rules adopted by the ~~land use panel~~  
13 council, shall accept determinations issued by a development review board  
14 under the provisions of 24 V.S.A. § 4420, with respect to local Act 250 review  
15 of municipal impacts. The acceptance of such approval, positive  
16 determinations, permit, or permits shall create a presumption that the  
17 application is not detrimental to the public health and welfare with respect to  
18 the specific requirement for which it is accepted. In the case of ~~approvals and~~  
19 ~~permits issued by the agency of natural resources~~ divisions of the department  
20 other than the division of state land use, technical determinations of ~~the agency~~  
21 the department shall be accorded substantial deference by the commissions.



1 The same deference also shall be given to technical determinations of the  
2 departments of fish and wildlife and of forests, parks and recreation. The  
3 acceptance of negative determinations issued by a development review board  
4 under the provisions of 24 V.S.A. § 4420, with respect to local Act 250 review  
5 of municipal impacts shall create a presumption that the application is  
6 detrimental to the public health and welfare with respect to the specific  
7 requirement for which it is accepted. Any determinations, positive or negative,  
8 under the provisions of 24 V.S.A. § 4420 shall create presumptions only to the  
9 extent that the impacts under the criteria are limited to the municipality issuing  
10 the decision. Such a rule may be revoked or amended pursuant to the  
11 procedures set forth in 3 V.S.A., chapter 25, the Vermont Administrative  
12 Procedure Act. The rules adopted by the land use panel shall not approve the  
13 acceptance of a permit or approval of such an agency or a permit of a  
14 municipal government unless it satisfies the appropriate requirements of  
15 subsection (a) of this section.

16 \* \* \*

17 Sec. 28. 10 V.S.A. § 6086b is added to read:

18 § 6086b. PERMIT CONSOLIDATION

19 Notwithstanding any other provision of law, each of the following shall  
20 apply when a development or subdivision subject to this chapter also requires  
21 other permits, certificates, or approvals from the department:

1           (1) The applicant shall apply to the district commission for a permit  
2 under this chapter and all other required permits, certificates, and approvals  
3 from the department on a form issued by the department's executive director  
4 and approved by the council.

5           (2) The applicable time frames and notice and hearing procedures for all  
6 such other permits, certificates, and approvals shall run concurrently with the  
7 process under this chapter and shall be those time frames and procedures that  
8 apply to applications under this chapter.

9           (3) The determination of whether to issue such other permit, certificate,  
10 or approval of the department shall not be made by the division or branch of  
11 the department that would make the determination absent jurisdiction under  
12 this chapter. Instead, such division or branch of the department shall make its  
13 recommendation to the district commission, which recommendation shall be  
14 entitled to substantial deference in accordance with subsection 6086(d) of this  
15 title.

16           (4) The district commission shall have authority to determine whether to  
17 approve, approve with conditions, or deny an application under this section.

18           (5) In addition to the findings required by section 6086 of this title,  
19 before granting a permit under this section, the district commission shall make  
20 all findings required by, and necessary to ensure that the development or

1 subdivision will comply with all applicable statutes and regulations of the  
2 department.

3 (6) The district commission shall issue its determination on an  
4 application under this section as one set of findings of fact and conclusions of  
5 law and, if a permit is granted, an associated permit that at a minimum  
6 states the statutes and regulations under which it is issued, the required  
7 approvals and approved activities which it encompasses, and all conditions that  
8 the district commission has determined to be necessary.

9 (7) If a statute or regulation of the department applied by the district  
10 commission under this section requires that a permit, certificate, or other  
11 approval be for a specified period of time or subject to expiration, the district  
12 commission's decision under this section shall indicate which specific  
13 findings, approvals, and activities are time-limited, the date of expiration, and  
14 the date by which an application for renewed authority must be filed.

15 (A) Other findings, approvals, and activities for the same  
16 development or subdivision contained in the decision shall not be affected by  
17 such time limit or expiration.

18 (B) The district commission shall be the decision-making body for  
19 each such application for renewed authority and the provisions of subdivisions  
20 (3) through (5) of this section shall apply.

1           (8) With respect to a proceeding for partial findings under subsection  
2 6086(b) of this title, review of all other required permits, certificates, or  
3 approvals of the department that address the requirements of the findings at  
4 issue in the proceeding shall be consolidated with that proceeding in  
5 accordance with this section.

6           (A) The provisions of subsection 6086(b) of this title and the rules of  
7 the council concerning issuance of partial findings shall apply to the  
8 consolidated consideration of such other permits, certificates, or approvals.

9           (B) The district commission's decision in such a proceeding shall  
10 include partial findings of fact and conclusions of law only, and actual  
11 approval under the applicable statutes and regulations of the department shall  
12 await the consideration of the remaining criteria of section 6086 of this title.

13           (C) The consolidated consideration of other required permits,  
14 certificates, or approvals of the department that do not address the  
15 requirements of the findings at issue may await the consideration of the  
16 remaining criteria of section 6086 of this title.

17           (9) The council shall adopt such rules as are necessary to effect an  
18 orderly and efficient process under this section.

1                                      \* \* \* Environmental Enforcement \* \* \*

2      Sec. 29. 10 V.S.A. § 8001 is amended to read:

3      § 8001. LEGISLATIVE FINDINGS

4              The general assembly finds it necessary to standardize and enhance the  
5      enforcement powers of the ~~secretary of the agency of natural resources and the~~  
6      ~~enforcement powers of the land-use panel of the natural resources board~~  
7      department of environmental quality in order to:

8    \* \* \*

9      Sec. 30. 10 V.S.A. § 8002 is amended to read:

10     § 8002. DEFINITIONS

11             As used in this chapter:

12             (1) ~~“Board”~~ “Council” means the ~~natural resources~~ environmental  
13     council defined by subdivision 6001(1) of this title created under chapter 51 of  
14     Title 3.

15    \* \* \*

16             (3) “Investigator” means an investigator designated and duly authorized  
17     by the ~~secretary or the board~~ director.

18    \* \* \*

19             (7) ~~“Secretary” means the secretary of the agency of natural resources,~~  
20     ~~or the secretary’s duly authorized representative~~ “Department” means the  
21     department of environmental quality created under chapter 51 of Title 3.

1 \* \* \*

2 (10) ~~“Land use panel” means the land use panel of the board, as~~  
3 ~~established under chapter 151 of this title~~ “Director” means the director of  
4 environmental enforcement under sections 2854 and 2880 of Title 3.

5 \* \* \*

6 Sec. 31. 10 V.S.A. § 8003 is amended to read:

7 § 8003. APPLICABILITY

8 (a) The ~~secretary~~ director may take action under this chapter to enforce the  
9 following statutes:

10 \* \* \*

11 (b) The ~~secretary's~~ administrative enforcement authority established by this  
12 chapter shall supplement any authority of the ~~secretary~~ department or other  
13 state agency or department established by the chapters set forth in subsection  
14 (a) of this section to initiate criminal proceedings, or civil proceedings under  
15 chapters 47, 56, 59<sub>2</sub> and 159 of this title.

16 \* \* \*

17 Sec. 32. 10 V.S.A. § 8004 is amended to read:

18 § 8004. ENFORCEMENT OF ACT 250

19 In addition to the enforcement of chapter 151 of this title on the ~~secretary's~~  
20 director's initiative, the ~~secretary shall~~ director may institute enforcement  
21 proceedings under chapter 151 when requested by ~~the land use panel~~ a district

1 coordinator or district commission. ~~The secretary and the land use panel shall~~  
2 ~~develop procedures for the cooperative enforcement of chapter 151 of this title.~~

3 Sec. 33. 10 V.S.A. § 8016 is amended to read:

4 § 8016. RULEMAKING

5 The ~~secretary, in consultation with the land use panel,~~ council shall adopt  
6 rules defining classes of violations and an appropriate range of administrative  
7 penalties to be assessed for each class of violation. The classes of violation  
8 and range of penalties shall take into account the degree of potential impact on  
9 public health, safety, and welfare and the environment resulting from the  
10 violation. No administrative penalty may be assessed as part of an  
11 administrative order pursuant to this chapter until applicable rules and  
12 procedures have been adopted.

13 Sec. 34. 10 V.S.A. § 8019 is amended to read:

14 § 8019. ENVIRONMENTAL TICKETING

15 (a) The ~~secretary and the board~~ council ~~each~~ shall have the authority to  
16 adopt rules for the issuance of civil complaints for violations of ~~their respective~~  
17 the department's enabling statutes or rules adopted under those statutes that are  
18 enforceable in the judicial bureau pursuant to the provisions of chapter 29 of  
19 Title 4. Any proposed rule under this section shall include both the full and  
20 waiver penalty amounts for each violation. The maximum civil penalty for any

1 violation brought under this section shall not exceed \$3,000.00 exclusive of  
2 court fees.

3 (b) A civil complaint issued under this section shall preclude the ~~issuing~~  
4 ~~entity~~ director from seeking an additional monetary penalty for the violation  
5 specified in the complaint when any one of the following occurs: the waiver  
6 penalty is paid, judgment is entered after trial or appeal, or a default judgment  
7 is entered. Notwithstanding this preclusion, the ~~agency and the board~~ director  
8 may issue additional complaints or initiate an action under chapter 201 of this  
9 title, including a monetary penalty when a violation is continuing or is  
10 repeated, and may also bring an enforcement action to obtain injunctive relief  
11 or remediation and, in such additional action, may recover the costs of bringing  
12 the additional action and the amount of any economic benefit the respondent  
13 obtained as a result of the underlying violation in accordance with subdivisions  
14 8010(b)(7) and (c)(1) of this title.

15 (c) The ~~secretary or board chair~~ director and his or her duly authorized  
16 representative shall have the authority to amend or dismiss a complaint by so  
17 marking the complaint and returning it to the judicial bureau or by notifying  
18 the hearing officer at the hearing.

19 \* \* \*



1 Sec. 35. 10 V.S.A. § 8221 is amended to read:

2 § 8221. CIVIL ENFORCEMENT

3 (a) ~~The secretary, or the land use panel of the natural resources board with~~  
4 ~~respect to matters relating to land use permits under chapter 151 of this title~~  
5 ~~only,~~ department of environmental quality may bring an action in superior  
6 court to enforce the provisions of law specified in subsection 8003(a) of this  
7 title, to ensure compliance, and to obtain penalties in the amounts described in  
8 subsection (b) of this section. The department of fish and wildlife and the  
9 department of forests, parks and recreation, respectively, shall have the same  
10 authority with regard to a provision of law specified in subsection 8003(a) of  
11 this title that refers to the authority of that department. The action shall be  
12 brought by the attorney general in the name of the state.

13 \* \* \*

14 \* \* \* Appeals \* \* \*

15 Sec. 36. 10 V.S.A. § 8502 is amended to read:

16 § 8502. DEFINITIONS

17 As used in this chapter:

18 \* \* \*

19 (3) “Environmental ~~court~~ council” means the environmental ~~court~~  
20 council established under 4 3 V.S.A. chapter ~~27~~ 51.

1 (4) ~~“Natural resources board” means the board established under chapter~~  
2 ~~151 of this title.~~

3 \* \* \*

4 (7) “Person aggrieved” means a person who alleges an injury to a  
5 particularized interest protected by the provisions of law listed in section 8503  
6 of this title, attributable to an act or decision by a district coordinator, district  
7 commission, the ~~secretary~~ department, the Vermont downtown development  
8 board created under 24 V.S.A. § 2792, or the environmental ~~court~~ council that  
9 can be redressed by the environmental ~~court~~ council or the supreme court.  
10 With respect to an appeal of an act or decision under chapter 151 of this title,  
11 “person aggrieved” also mean an interested person under subdivision 6001(32)  
12 of this title.

13 (8) ~~“Secretary” “Department” means the secretary of the agency of natural~~  
14 ~~resources or the secretary’s duly authorized representative~~ department of  
15 environmental quality created under 3 V.S.A. chapter 51. For the purposes of  
16 this chapter, ~~“secretary” “department” shall also mean the commissioner of the~~  
17 ~~department of environmental conservation, the commissioner of the~~  
18 ~~department~~ departments of forests, parks and recreation; and ~~the commissioner~~  
19 ~~of the department~~ of fish and wildlife, and the commissioners thereof, with  
20 respect to those statutes that refer to the authority of that commissioner or  
21 department.

1 Sec. 37. 10 V.S.A. § 8503(c) is amended to read:

2 (c) This chapter shall govern:

3 (1) ~~all~~ All appeals arising under 24 V.S.A. chapter 117, the planning and  
4 zoning chapter.

5 (2) All appeals arising from a designation decision by the Vermont  
6 downtown development board under section 2793b, 2793c, or 2793d of  
7 Title 24.

8 Sec. 38. 10 V.S.A. § 8504(b) is amended to read:

9 (b) Planning and zoning and downtown development chapter appeals.

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

19 (2) Within 30 days of a designation decision under 24 V.S.A.  
20 § 2793b(b), 2793c(e), or 2793d(b), any interested person as defined in this  
21 subdivision may appeal to the environmental council.

1           (A) Any such appellant must have participated before the Vermont  
2 downtown development board created under 24 V.S.A. § 2792 by submitting  
3 written comments to that board or appearing at a public hearing or meeting of  
4 that board and providing oral comments pertaining to the designation at issue.

5           (B) For the purpose of this subdivision (2), “interested person” means  
6 any one of the following:

7                   (i) A person aggrieved by the decision.

8                   (ii) The municipality seeking the designation and any municipality  
9 that is adjacent to the area proposed for the designation.

10                   (iii) Any person owning or occupying property in or adjacent to  
11 the area proposed for the designation who can demonstrate a potential physical  
12 or environmental impact on the person’s interest from the designation, and  
13 who alleges that the designation does not conform to the requirements of the  
14 statute under which it was issued.

15                   (iv) Any 10 persons who may be any combination of voters or real  
16 property owners within the municipality seeking the designation who, by  
17 signed petition, allege that the designation does not conform to the  
18 requirements of the statute under which it was issued. Such appellants must  
19 designate one person to serve as their representative regarding all matters  
20 related to the appeal.

1           (v) Any department and administrative subdivision of this state  
2 owning property or any interest in property within the region or municipality,  
3 and the agency of commerce and community development of this state.

4

5           (3) Notwithstanding ~~subdivision~~ subdivisions (1) and (2) of this  
6 subsection, an interested person may appeal an act or decision under 24 V.S.A.  
7 chapter 117 or a designation decision under section 2793b, 2793c, or 2793d of  
8 Title 24 if the environmental ~~judge~~ council determines that:

9           (A) there was a procedural defect which prevented the person from  
10 ~~obtaining interested person status or~~ participating in the proceeding or, in the  
11 case of subdivision (1) of this subsection, from obtaining interested person  
12 status;

13           (B) in the case of subdivision (1) of this subsection, the decision  
14 being appealed is the grant or denial of interested person status; or

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

17 Sec. 39. 10 V.S.A. § 8504(l) through (n) are amended to read:

18           (l) Representation. The ~~secretary~~ department's office of environmental  
19 counsel may represent the ~~agency of natural resources~~ department in all  
20 appeals under this section, provided that any such representation is by counsel  
21 who does not also provide assistance to the council on any quasi-judicial

1 ~~proceeding. The chair of the natural resources board, on behalf of the board or~~  
2 ~~either panel, may represent the board or either panel of the natural resources~~  
3 ~~board in any appeal under this section, unless the board or the relevant panel~~  
4 ~~directs otherwise. If more than one state agency, other than the board or a~~  
5 ~~panel of the natural resources board, either appeals or seeks to intervene in an~~  
6 ~~appeal under this section, only the attorney general may represent the interests~~  
7 ~~of those agencies of the state in the appeal.~~

8 (m) Precedent. Prior decisions of the environmental board, water resources  
9 board, ~~and~~ waste facilities panel, and environmental court shall be given the  
10 same weight and consideration as prior decisions of the environmental ~~court~~  
11 council.

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

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

16 (2) is a party by right;

17 (3) ~~is the natural resources board, or either panel of the board~~ qualifies  
18 as an interested person, as established in subdivision 6001(32) of this title, with  
19 respect to appeals of acts or decisions under chapter 151 of this title;

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

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

2 § 4465, with respect to appeals under 24 V.S.A. chapter 117; or

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

5 Sec. 40. 10 V.S.A. § 8505(a) is amended to read:

6 (a) Any person aggrieved by a decision of the environmental ~~court~~ council  
7 pursuant to this ~~subchapter, chapter, or~~ any party by right, ~~or the board or~~  
8 ~~either panel of the board~~ may appeal to the supreme court within 30 days of the  
9 date of the entry of the order or judgment appealed from, provided that:

10 (1) the person was a party to the proceeding before the environmental  
11 ~~court~~ council;

12 \* \* \*

13 Sec. 41. 10 V.S.A. § 8506 is added to read:

14 § 8506. FEES

15 (a) All persons filing an appeal to the environmental council under this  
16 chapter shall pay a fee of \$250.00, plus any associated publication costs. The  
17 council may waive the fee or publication costs if the council finds that the  
18 appellant is unable to pay the fee or publication costs. The fee of \$250.00 shall  
19 not apply to appeals to the council initiated in the name of the state by public  
20 officials authorized to do so.

1       (b) All funds collected pursuant to this section shall be deposited into the  
2       fund created in section 6029 of this title.

3                   \* \* \* Title 24 Provisions (Growth Centers; Municipal and  
4                                   Regional Land Use Planning) \* \* \*

5       Sec. 42. 24 V.S.A. § 2792 is amended to read:

6       § 2792. VERMONT DOWNTOWN DEVELOPMENT BOARD

7       (a) A “Vermont downtown development board,” also referred to as the  
8       “state board,” is created to administer the provisions of this chapter. The state  
9       board shall be composed of the following members, or their designees:

10           (1) The secretary of commerce and community development;

11           (2) The secretary of transportation;

12           (3) ~~The secretary of natural resources~~ executive director of the  
13       department of environmental quality;

14           (4) ~~the commissioner of public safety~~ The planning director of the  
15       department of environmental quality;

16           (5) ~~the~~ The state historic preservation officer;

17           (6) ~~a~~ A person appointed by the governor from a list of three names  
18       submitted by the Vermont Natural Resources Council, the Preservation Trust  
19       of Vermont, and Smart Growth Vermont;

20           (7) ~~a~~ A person appointed by the governor from a list of three names  
21       submitted by the Association of Chamber Executives; ~~and~~





1 ~~of the natural resources board or a representative of the land use panel of the~~  
2 ~~natural resources board designated by the chair; and a representative of a~~  
3 ~~regional planning commission designated by the Vermont association of~~  
4 ~~regional planning and development agencies (VAPDA) and an alternate~~  
5 ~~representative designated by VAPDA to enable all applications to be~~  
6 ~~considered by a representative from a regional planning commission other than~~  
7 ~~the one to which the applicant municipality is a member. The alternate~~  
8 ~~designated by VAPDA may vote only when the designated representative does~~  
9 ~~not vote.~~

10 Sec. 43. 24 V.S.A. § 2793c is amended to read:

11 § 2793c. DESIGNATION OF GROWTH CENTERS

12 \* \* \*

13 (b) Growth center designation application assistance.

14 (1) ~~By October 1, 2006, the chair of the land use panel of the natural~~  
15 ~~resources board~~ The planning director of the department of environmental  
16 quality and the commissioner of housing and community affairs jointly shall  
17 constitute a planning coordination group which shall develop a coordinated  
18 process to:

19 \* \* \*

20 (2) This program shall include the following:

21 \* \* \*



1 designation by the state board, an applicant municipality may submit a request  
2 for findings of fact and conclusions of law under specific criteria of 10 V.S.A.  
3 § 6086(a) to the ~~land use panel of the natural resources board~~ applicable  
4 district commission under 10 V.S.A. chapter 151 for consideration in  
5 accordance with the following:

6 \* \* \*

7 (2) The ~~panel~~ district commission shall notify all landowners of land  
8 located within the proposed growth center, entities that would be accorded  
9 party status ~~before a district commission~~ under 10 V.S.A. § 6085(c)(1)(C) and  
10 (D), and all owners of land adjoining the proposed growth center of a hearing  
11 on the issue. The ~~panel~~ district commission may fashion alternate and more  
12 efficient means of providing adequate notice to persons potentially affected  
13 under this subdivision. Persons notified may appear at the hearing and be  
14 heard, as may any other person who has a particularized interest protected by  
15 10 V.S.A. chapter 151 that may be affected by the decision.

16 (3) The ~~panel~~ district commission shall review the request in accordance  
17 with and shall issue findings of fact and conclusions of law under the  
18 applicable criteria of 10 V.S.A. § 6086(a) which are deemed to have been  
19 satisfied by the applicant's submissions during the formal designation process,  
20 any additional submissions, as well as associated municipal plan policies,  
21 programs, and bylaws. Findings and conclusions of law shall be effective for a

1 period of five years, unless otherwise provided. The ~~panel~~ district  
2 commission, before issuing its findings and conclusions, may require specific  
3 changes in the proposal, or regulatory changes by the municipality, as a  
4 condition for certain findings and conclusions. These findings and conclusions  
5 shall be subject to appeal to the environmental court pursuant to 10 V.S.A.  
6 chapter 220 within 30 days of issuance.

7 (4) During the period of time in which a growth center designation  
8 remains in effect, any findings and conclusions issued by the ~~panel~~ district  
9 commission or any final adjudication of those findings and conclusions shall  
10 be applicable to any subsequent application for approval by ~~a~~ the district  
11 commission under chapter 151 of Title 10 and shall be binding upon the  
12 district commission and the persons provided notice in ~~the land use panel~~  
13 district commission proceeding under subdivision (3) of this subsection,  
14 according to the rules of the ~~land use panel~~ environmental council, provided  
15 the proposed development project is located within the designated growth  
16 center.

17 (5) In any application to a district commission under chapter 151 of  
18 Title 10 for approval of a proposed development or subdivision to be located  
19 within the designated growth center, the district commission shall review  
20 de novo any relevant criteria of 10 V.S.A. § 6086(a) that are not subject to

1 findings of fact and conclusions of law issued ~~by the land use panel~~ pursuant to  
2 ~~this section~~ the proceeding under subdivision (3) of this subsection.

3 (6) The decision of the state board pursuant to this section shall not be  
4 binding as to the criteria of 10 V.S.A. § 6086(a) in any proceeding before ~~the~~  
5 ~~panel~~ or a district commission.

6 \* \* \*

7 Sec. 44. 24 V.S.A. § 4304 is amended to read:

8 § 4304. PLANNING AND LAND USE MANUAL

9 (a) ~~The agency of commerce and community development~~ department of  
10 environmental quality through its planning director shall prepare, maintain, and  
11 distribute from time to time to all municipalities a manual setting forth:

12 \* \* \*

13 (b) ~~The agency of commerce and community development~~ the department  
14 of environmental quality through its planning director shall, from time to time,  
15 confer with interested persons with a view toward insuring the maintenance of  
16 such manual in a form most useful to those regions and municipalities making  
17 use of it.

18 \* \* \*

1 Sec. 45. 24 V.S.A. § 4440 is amended to read:

2 § 4440. ADMINISTRATION; FINANCE

3

\* \* \*

4 (d) The legislative body ~~may~~ shall establish procedures and standards for  
5 requiring an applicant to pay for reasonable costs of an independent technical  
6 review of the application. At a minimum, such procedures and standards shall  
7 provide that the municipality will retain, at the cost of the applicant, a  
8 professional engineer to examine each application for which review by an  
9 appropriate municipal panel is required and to provide analysis and assistance  
10 to the appropriate municipal panel during the course of that review.

11 Sec. 46. 24 V.S.A. § 4461 is amended to read:

12 § 4461. DEVELOPMENT REVIEW PROCEDURES

13 (a) Meetings.

14 (1) An appropriate municipal panel shall elect its own officers and adopt  
15 rules of procedure, subject to this section and other applicable state statutes,  
16 and shall adopt rules of ethics with respect to conflicts of interest. As of  
17 July 1, 2011, the authority of any municipality under this chapter to adopt or  
18 amend a bylaw or to require a new or amended municipal land use permit  
19 under this chapter shall lapse unless each appropriate municipal panel of the  
20 municipality has adopted such rules of procedure and ethics. This authority  
21 shall revive upon adoption of such rules by each appropriate municipal panel

1 of the municipality. During any period of lapsed authority under this  
2 subsection, the municipality shall be treated for the purpose of chapter 151 of  
3 Title 10 as not having both permanent zoning and subdivision bylaws.

4 (2) Meetings of any appropriate municipal panel shall be held at the call  
5 of the ~~chairperson~~ chair and at such times as the panel may determine. The  
6 officers of the panel may administer oaths and compel the attendance of  
7 witnesses and the production of material germane to any issue under review.  
8 All meetings of the panel, except for deliberative and executive sessions, shall  
9 be open to the public. The panel shall keep minutes of its proceedings,  
10 showing the vote of each member upon each question, or, if absent or failing to  
11 vote, indicating this, and shall keep records of its examinations and other  
12 official actions, all of which shall be filed immediately in the office of the clerk  
13 of the municipality as a public record. For the conduct of any hearing and the  
14 taking of any action, a quorum shall be not less than a majority of the members  
15 of the panel, and any action of the panel shall be taken by the concurrence of a  
16 majority of the panel.

17 \* \* \*

18 Sec. 47. 24 V.S.A § 4463a is added to read:

19 § 4463a. COMPLETENESS OF APPLICATIONS

20 This section applies to all development review applications before an  
21 appropriate municipal panel under this chapter. Within 60 days of referral or



1 appeal of an application from the administrative officer, or direct submission  
2 of an application by the applicant to an appropriate municipal panel if such is  
3 otherwise authorized, the appropriate municipal panel shall issue a  
4 determination of whether the application is complete, and failure of the panel  
5 to issue such a determination within this period shall be deemed approval and  
6 effective on the 61st day. The hearing and notice requirements of subsections  
7 4464(a) and (b) of this title shall not apply to the panel's determination and  
8 decision on whether an application is complete. If the panel determines that an  
9 application is incomplete, it shall list each specific item that is missing and  
10 provide the applicant a reasonable time to amend its application. A decision  
11 under this section on whether an application is complete shall be in writing and  
12 shall be sent to the applicant by certified mail.

13 Sec. 48. 24 V.S.A. § 4464 is amended to read:

14 § 4464. HEARING AND NOTICE REQUIREMENTS; DECISIONS AND  
15 CONDITIONS; ADMINISTRATIVE REVIEW; ROLE OF  
16 ADVISORY COMMISSIONS IN DEVELOPMENT REVIEW

17 \* \* \*

18 (b)(1)(A) Decisions. The appropriate municipal panel may recess the  
19 proceedings on any application pending submission of additional information.  
20 The panel should close the evidence promptly after all parties have submitted  
21 the requested information. The panel shall adjourn the hearing and issue a

1 decision within 45 days after the adjournment of the hearing, and failure of the  
2 panel to issue a decision within this period shall be deemed approval and shall  
3 be effective on the 46th day. Decisions shall be issued in writing and shall  
4 include a statement of the factual bases on which the appropriate municipal  
5 panel has made its conclusions and a statement of the conclusions. The  
6 minutes of the meeting may suffice, provided the factual bases and conclusions  
7 relating to the review standards are provided in conformance with this  
8 subsection.

9 (B) Notwithstanding any other provision of law, if an appropriate  
10 municipal panel has not closed the evidence in the proceeding within 120 days  
11 of filing a determination that an application is complete under section 4463a of  
12 this title, then the panel and the municipality shall be divested of jurisdiction  
13 over the application, which shall be transferred immediately to the district  
14 commission under 10 V.S.A. chapter 151 for the environmental district in  
15 which the proposed use is located. The district commission shall then  
16 promptly determine, based on the application as filed, whether to approve,  
17 approve with conditions, or deny the application under the applicable bylaw or  
18 bylaws. In making this determination, the district commission shall have all  
19 the same authority as would the appropriate municipal panel. A district  
20 commission decision under this subdivision (1)(B) shall be deemed a decision  
21 of the appropriate municipal panel from which jurisdiction was transferred and

1 shall be appealable and enforceable in the same manner as any other decision  
2 of that panel.

3 \* \* \*

4 Sec. 49. 24 V.S.A. § 4470 is amended to read:

5 § 4470. SUCCESSIVE APPLICATIONS AND APPEALS; REQUESTS FOR  
6 RECONSIDERATION TO AN APPROPRIATE MUNICIPAL  
7 PANEL

8 (a) An appropriate municipal panel shall reject a subsequent application for  
9 a use that is identical or substantially similar to a use that was proposed for the  
10 same property in a prior application on which a final decision was rendered,  
11 and appeal was not taken within the period prescribed by law or appeal was  
12 taken and resolved. This prohibition shall not apply if the subsequent  
13 application is substantially changed, including substantial changes proposed to  
14 address deficiencies in the prior application.

15 (b) An appropriate municipal panel may reject an appeal or request for  
16 reconsideration without hearing and render a decision, which shall include  
17 findings of fact, within 10 days of the date of filing of the notice of appeal, if  
18 the appropriate municipal panel considers the issues raised by the appellant in  
19 the appeal have been decided in an earlier appeal or involve substantially or  
20 materially the same facts by or on behalf of that appellant. The decision shall  
21 be rendered, on notice given, as in the case of a decision under subdivision

1 4464(b)(3) of this title, and shall constitute a decision of the appropriate  
2 municipal panel for the purpose of section 4471 of this title.

3 ~~(b)~~(c) A municipality shall enforce all decisions of its appropriate  
4 municipal panels, and further, the superior court, or the environmental court  
5 shall enforce such decisions upon petition, complaint or appeal or other means  
6 in accordance with the laws of this state by such municipality or any interested  
7 person by means of mandamus, injunction, process of contempt, or otherwise.

8 Sec. 50. 24 V.S.A. § 4476 is amended to read:

9 § 4476. FORMAL REVIEW OF REGIONAL PLANNING COMMISSION  
10 DECISIONS AND MUNICIPAL PLANS AND AMENDMENTS

11 (a) Formal review. A request for formal review of the sufficiency of an  
12 adopted regional or municipal plan or amendment, or for formal review of the  
13 decision of a regional planning commission with respect to the confirmation of  
14 a municipal planning effort, or the decision relating to approval of a municipal  
15 plan, shall be to the ~~regional review panel~~ environmental council created under  
16 ~~section 4305 of this title. A request for formal review shall be~~ chapter 51 of  
17 Title 3, filed within ~~21~~ 30 days of adoption of the plan or amendment or the  
18 decision.

19 (b) Standing. The following have standing to request formal review or  
20 become parties to formal review conducted under this section:

1           (1) a person owning title to property affected by a decision of the  
2 regional planning commission or a regional or municipal plan or amendment  
3 who alleges that that decision, plan, or amendment imposes on that property  
4 unreasonable or inappropriate restrictions that significantly impair present or  
5 potential use under the particular circumstances of the case;

6           (2)(A) in the case of a regional planning commission decision or a  
7 regional plan or amendment, a municipality whose planning effort is the  
8 subject of a decision by the regional planning commission, any other  
9 municipality within the region, any municipality which adjoins the region, or a  
10 regional planning commission which adjoins the region;

11           (B) in the case of a municipal plan or amendment, the regional  
12 planning commission and any municipality or regional planning commission  
13 which adjoins the municipality;

14           (3) any agency, department, or other governmental subdivision of the  
15 state owning property or an interest therein within a municipality listed in  
16 subdivision (2) of this subsection, and the agency of commerce and community  
17 development;

18           (4) any 20 persons who by signed petition allege that ~~the~~ a regional  
19 planning commission decision, if confirmed, will not be in accord with the  
20 requirements of this chapter, and who own or occupy real property located  
21 within any combination of the following:

1           (A) any municipality whose planning effort is the subject of the  
2 decision by the regional planning commission; or

3           (B) any municipality which adjoins a municipality whose planning  
4 effort is subject of the decision by the regional planning commission;

5           (5) with respect to the sufficiency of an adopted or amended regional or  
6 municipal plan, any 20 persons who by signed petition allege that the plan or  
7 amendment is not in accord with the requirements of this chapter, and who  
8 own or occupy real property that, in the case of a regional plan or amendment,  
9 is located within the area that includes the region and the municipalities that  
10 adjoin the region or, in the case of a municipal plan or amendment, is located  
11 within the area that includes the municipality and the adjoining municipalities;

12           (6) the regional planning commission or municipality whose plan,  
13 amendment, or decision is the subject of the request for formal review.

14           (c) Procedure; ~~regional review panel~~. Notice of formal review shall be sent  
15 by mail to the municipalities within the region, including any municipality  
16 whose plan or amendment may be at issue, to the regional planning  
17 commission, and to the agency of commerce and community development and  
18 shall be accompanied by a statement of all reasons why the appellant believes  
19 the plan or opinion to be in error and all issues which the appellant believes to  
20 be relevant. Within 30 days of receipt of the notice of formal review, the date  
21 for a hearing shall be set and the environmental council shall publish notice of

1 the hearing in a newspaper of general circulation in the applicable region and  
2 any municipality whose plan or amendment is at issue, and shall provide notice  
3 in writing of the hearing to individuals and organizations that had requested  
4 notice from the regional planning commission under section 4348 relating to  
5 the adoption of a regional plan and any other individuals and organizations that  
6 request such notice. The appellant shall pay the costs of publication. The  
7 hearing shall be held within 45 days of receipt of the notice of formal review.  
8 Upon motion, for good cause shown, the ~~panel~~ environmental council may  
9 extend the date of the hearing. Within 20 days of adjournment of the hearing,  
10 the ~~regional review panel~~ environmental council shall issue a decision  
11 approving, conditionally approving or disapproving the regional or municipal  
12 plan or amendment or the opinion with respect to confirmation of the  
13 municipal planning effort or approval of the municipal plan. The ~~regional~~  
14 ~~review panel~~ environmental council's review under this section shall be  
15 governed by the provisions for contested cases in chapter 25 of Title 3.

16 (d) Issues on formal review.

17 (1) With respect to formal review of the sufficiency of an adopted or  
18 amended regional plan, the ~~regional review panel~~ environmental council shall  
19 determine:

20 (A) whether the plan contains the elements required by law;

1 (B) whether the plan is compatible with the plans of adjoining  
2 regions; ~~and~~

3 (C) whether the plan is consistent with the goals established in  
4 section 4302 of this title; and

5 (D) whether the policies contained in the plan constitute specific  
6 policies that may be applied under 10 V.S.A. § 6086(a)(10).

7 (2) With respect to formal review of a regional planning commission  
8 decision on the confirmation of a municipal planning effort, the ~~regional~~  
9 ~~review panel~~ environmental council shall determine:

10 (A) whether the municipality is engaged in a continuing planning  
11 process that, within a reasonable time, will attain consistency with the goals  
12 established in section 4302 of this title; and

13 (B) whether the municipality is maintaining its efforts to provide  
14 local funds for municipal and regional planning purposes.

15 (3) With respect to formal review of an adopted or amended municipal  
16 plan or a regional planning commission decision on the approval or  
17 disapproval of a municipal plan, the ~~regional review panel~~ environmental  
18 council shall determine:

19 (A) whether the plan is consistent with the goals established in  
20 section 4302 of this title;

21 (B) whether the plan is compatible with its regional plan; ~~and~~



1 (C) whether the plan is compatible with approved plans of other  
2 municipalities in the region; and

3 (D) whether the policies contained in the plan constitute specific  
4 policies that may be applied under 10 V.S.A. § 6086(a)(10).

5 (e) Stays.

6 (1) The filing of a notice of formal review shall not stay the effect of the  
7 plan or the decision of the regional planning commission, unless so ordered by  
8 the ~~regional review panel~~ environmental council.

9 (2) If notice of formal review of the decision of a regional planning  
10 commission to approve or disapprove a municipal plan is filed prior to final  
11 adoption of the plan, the ~~regional review panel~~ environmental council shall  
12 stay formal review proceedings pending final adoption. The ~~panel~~ council,  
13 however, may proceed with formal review upon the request of the municipality  
14 whose plan is the subject of the review.

15 (f) Appeal to supreme court. An appeal from a decision of the ~~regional~~  
16 ~~review panel~~ environmental council under this section shall be to the supreme  
17 court.

1 Sec. 51. PERMIT PROCESS WORKING GROUP; REPORT TO  
2 LEGISLATURE

3 No later than two years from the date on which the department of  
4 environmental quality (the department) comes into existence, the department  
5 shall initiate, conduct, and complete each of the following:

6 (1) The department shall convene a permit process working group (the  
7 working group). The chair of the environmental council or his or her designee  
8 shall be the chair of the working group. At least the following persons or  
9 organizational interests shall be members of or represented on the working  
10 group:

11 (A) The department's executive director or his or her designee.

12 (B) An employee of the department with substantial experience and  
13 knowledge of the permit processes of the former department of environmental  
14 conservation.

15 (C) An employee of the department's division of state land use with  
16 substantial knowledge and experience with respect to 10 V.S.A. chapter 151.

17 (D) The chairs of the house committee on fish, wildlife and water  
18 resources and the house and senate committees on natural resources and  
19 energy, who may designate another member of their committees to participate  
20 in the working group.

21 (E) The Lake Champlain regional chamber of commerce.

1           (F) The Vermont homebuilders and remodelers association.

2           (G) The Vermont association of realtors.

3           (H) Vermont businesses for social responsibility.

4           (I) Associated industries of Vermont.

5           (J) The Vermont natural resources council.

6           (K) The Conservation Law Foundation.

7           (L) The Vermont League of Cities and Towns, Inc.

8           (M) The Vermont planners association.

9           (N) The land use center at Vermont Law School.

10          (O) Smart growth Vermont.

11          (2) The working group at a minimum shall:

12           (A) Identify opportunities to merge and make identical criteria of  
13 10 V.S.A. § 6086(b) and the standards and criteria of other environmental and  
14 land use permit and approval processes administered by the department and  
15 other agencies of state government, with a goal to improve environmental  
16 protection, create procedural efficiencies, and reduce or eliminate  
17 redundancies. The working group shall develop recommended statutory  
18 language.

19           (B) Create a proposed program for delegating authority under  
20 10 V.S.A. chapter 151 to municipal governments with respect to developments  
21 and subdivisions within designated growth centers under 24 V.S.A. § 2793c,

1 provided that the appropriate municipal panels in the municipality operate in  
2 accordance with 24 V.S.A. chapter 36 (municipal administrative procedure act)  
3 and are certified by the department's planning division. The working group  
4 shall develop proposed requirements for such a certification, including training  
5 of panel members and rules of procedure and ethics.

6 (C) The department may divide the members of the working group  
7 into subcommittees for the purpose of completing the tasks required by  
8 subdivisions (2)(A) and (B) of this section.

9 (3) Based upon the working group process, submit draft legislation that  
10 at a minimum addresses the matters described in subdivisions (2)(A) and (B)  
11 of this section. This submittal shall be made to the house committee on fish,  
12 wildlife and water resources and the house and senate committees on natural  
13 resources and energy. The submittal also shall summarize the activities and  
14 results of the working group and describe the reasons for each proposed  
15 statutory revision.

16 Sec. 52. PERMIT PROCESS DATA ANALYSIS

17 No later than 18 months from the date on which the department of  
18 environmental quality (the department) comes into existence, the department  
19 shall perform an analysis and submit a written report, the purpose of which is  
20 to develop, for applications that have taken longer than 120 days to process, a  
21 more in-depth and systematic understanding of the reasons and categories of

1 reasons, whether structural or otherwise, for those longer periods. Each of the  
2 following shall apply to the analysis and reports required by this section:

3 (1) The analysis and report shall be with regard to applications for  
4 permits, under the programs formerly administered by the department of  
5 environmental conservation and the natural resources board, respectively, filed  
6 within the five years immediately prior to the date on which the department  
7 comes into existence.

8 (2) In performing the analysis required by this section, the department  
9 shall identify each application, the processing of which took longer than 120  
10 days from the date on which the application was first filed, regardless of  
11 whether the initial filing was complete. For the purpose of this subdivision,  
12 “identify” means at a minimum the name of each applicant, a brief description  
13 of the project, the location of the project, the permit or approval for which  
14 application was made, whether the application was for an original or amended  
15 permit, the date of initial application, and the date of disposition by, as  
16 applicable, the department of environmental conservation or a district  
17 commission.

18 (3) For each such application, the department shall identify each reason  
19 why the application took longer than 120 days to process. Reasons may  
20 include: the application was determined to be incomplete, in which case the  
21 department shall also identify whether and when the application was

1 completed; additional information was requested of the applicant, in which  
2 case the department shall also identify whether and when such information was  
3 received; the applicant requested that the application be placed on hold, in  
4 which case the department shall also identify whether and when the applicant  
5 requested that the application be reactivated; and such other reasons as are  
6 factually accurate.

7       (4) The department shall analyze the data developed pursuant to  
8 subdivisions (2) and (3) of this section and develop categories of reasons,  
9 applicable to multiple applications, why the applications subject to this section  
10 took longer than 120 days to process. The department shall determine the total  
11 number of applications that took longer than 120 days to process, the number  
12 of such applications for each category developed under this subdivision, and  
13 the number of such applications that are within more than one category  
14 developed under this subdivision.

15       (5) The department shall submit a report that includes, describes, and  
16 discusses at least each of the following:

17           (A) A summary of the actions and steps taken within the department  
18 to complete the tasks required by this section, including ensuring the accuracy  
19 of the data used and developed.

1           (B) An identification of each department program included in the  
2 analysis required by this section and, for each department program not  
3 included, a statement of why the program was not included.

4           (C) The total number of applications subject to this section that took  
5 longer than 120 days to process.

6           (D) For the categories of reasons developed under subdivision (4) of  
7 this section:

8                 (i) A summary of the analysis supporting the development of these  
9 categories.

10                (ii) An identification of each such category and the number of  
11 applications subject to this section that fall within the category.

12                (iii) The number of applications subject to this section that fall  
13 within more than one of the categories developed under subdivision (4) of this  
14 section.

15                (iv) The recommendations of the department to address each such  
16 category in a manner that reduces application processing time.

17 Recommendations may include draft legislation, rule changes, issuance or  
18 revision of procedures, and issuance or revision of application forms and  
19 instructions.

20           (E) An appendix, in electronic format on data disc, that contains  
21 individually for each application subject to this section a document that at a

1 minimum includes the information described in subdivisions (2) and (3) of this  
2 section. Document names shall use a consistent format. The data disc shall  
3 organize the documents in subfolders on the disc by department permit and,  
4 within those subfolders, by environmental district.

5 (6) The data gathered in completing the tasks required under  
6 subdivisions (2) and (3) of this section shall be entered in a database using  
7 software that is reasonably available to the general public, which database shall  
8 be capable of generating reports that can serve as the documents required by  
9 subdivision (5) of this subsection.

10 (7) The report required by subdivision (6) of this section shall be  
11 submitted to the working group created in Sec. 51 of this act, to the senate  
12 committees on economic development, housing and general affairs and on  
13 natural resources and energy, and to the house committees on commerce and  
14 economic development, on fish, wildlife and water resources, and on natural  
15 resources and energy.

16 \* \* \* Salaries of Environmental Council \* \* \*

17 Sec. 53. 32 V.S.A. § 1013 is added to read:

18 § 1013. ENVIRONMENTAL COUNCIL

19 The annual salary of the chair of the environmental council shall be the  
20 same as fixed for each magistrate under section 1003 of this title. The annual  
21 salary of each of the other members of the environmental council shall be



1 nine-tenths of the chair's salary. The annual salary of the executive director  
2 of the department of environmental quality shall be fixed by the council with  
3 the approval of the governor.

4 \* \* \* Repeal of Environmental Court \* \* \*

5 Sec. 54. REPEAL

6 4 V.S.A. chapter 27 (environmental court) is repealed.

7 \* \* \* Technical Amendments and Statutory Revision \* \* \*

8 Sec. 55. 10 V.S.A. § 442 is amended to read:

9 § 442. DEFINITIONS

10 As used in this chapter:

11 (1) ~~“Agency” means the agency of natural resources~~ “Department”  
12 means the department of forests, parks and recreation.

13 \* \* \*

14 Sec. 56. 10 V.S.A. § 552 is amended to read:

15 § 552. DEFINITIONS

16 As used in this chapter:

17 (1) ~~“Agency” means the agency of natural resources~~ “Department”  
18 means the department of environmental quality or its duly authorized  
19 representative.

20 \* \* \*



1           (1) In 3 V.S.A. §§ 2805 (environmental permit fund), 2806 (Barnwell  
2 potential liability fund), and 2808 (agency permits):

3           (A) Revise all references to the secretary to be to the chair except  
4 that, in the fifth sentence, the word “secretary’s” shall be replaced with  
5 “department’s.”

6           (B) Revise all references to the agency of natural resources to be to  
7 the department of environmental quality.

8           (2) In 3 V.S.A. § 2822(j) through (n) (fees), replace the terms “agency  
9 of natural resources,” “agency,” and “secretary” with “department.”

10          (3) In 3 V.S.A. § 2826 (environmental notice bulletin; handbook),  
11 replace the term “department of environmental conservation” with  
12 “department” and replace the term “secretary” with “council.”

13          (4) In 3 V.S.A. § 2828 (project scoping process):

14           (A) Replace the terms “department of environmental conservation”  
15 and “secretary” with the term “department,” except that in subsection (f), both  
16 occurrences of “secretary” shall be replaced with “executive director”;

17           (B) Delete, in the second sentence of subsection (b), the phrase “and,  
18 if appropriate, the district coordinator”;

19           (C) Delete, in the second sentence of subsection (c), the phrases “or  
20 the district coordinator determines that” and “is required.”

1           (5) Recodify 3 V.S.A. § 2840 (wind energy generation; state lands) as  
2           3 V.S.A. § 2872b and in that section as recodified:

3                   (A) Delete the phrase “of the agency” from the first sentence of  
4           subsection (b):

5                   (B) Replace all other occurrences of the term “agency” with the term  
6           “department of forests, parks and recreation.”

7           (6) In 3 V.S.A. § 2873(f)(2)–(4) (department of environmental  
8           conservation), replace each reference to “board” with “toxics technical  
9           advisory board.”

10           (7) In 3 V.S.A. § 2873(g) and (h)(1) (department of environmental  
11           conservation), replace each reference to “department of environmental  
12           conservation” with “department of environmental quality.”

13           (8) In 3 V.S.A. § 2873(h)(2)(C) (department of environmental  
14           conservation), replace “commissioner of environmental conservation” with  
15           “executive director with the approval of the environmental council.”

16           (9) In 10 V.S.A. chapter 8 (geographic information), revise all  
17           references to the secretary of the agency of natural resources to refer to the  
18           executive director of the department of environmental quality.

19           (10) In 10 V.S.A. chapter 19 (scenery preservation council):

20                   (A) Revise all references to the department of environmental  
21           conservation to refer to the department of environmental quality.

1           (B) Revise all references to the secretary of the agency of natural  
2 resources to refer to the executive director of the department of environmental  
3 quality.

4           (11) In 10 V.S.A. chapter 20 (Vermont trails system), revise all  
5 references to the agency of natural resources to refer to the department of  
6 forests, parks and recreation.

7           (12) In 10 V.S.A. § 554 through 583 (air pollution control):

8           (A) Revise all references to the secretary, the secretary of natural  
9 resources, and the agency of natural resources to refer to the department of  
10 environmental quality.

11           (B) Delete “and judicial review” from the catchline of 10 V.S.A.  
12 § 562.

13           (13) In 10 V.S.A. § 652(a)(2) (travel and recreation council), revise the  
14 reference to the secretary of the agency of natural resources to refer to the  
15 commissioner of the department of forests, parks and recreation.

16           (14) In 10 V.S.A. § 703 (state natural resources conservation council),  
17 revise the reference to the secretary of the agency of natural resources to refer  
18 to the executive director of the department of environmental quality.

19           (15) In 10 V.S.A. § 753 (flood hazard areas), revise the reference to the  
20 secretary of the agency of natural resources to refer to the department of  
21 environmental quality.

1           (16) In 10 V.S.A. § 6001, replace all occurrences of “secretary of  
2 natural resources” with “appropriate division of the department of  
3 environmental quality.”

4           (17) In 10 V.S.A. § 6083a, replace all occurrences of “land use panel”  
5 with “council.”

6           (18) In 10 V.S.A. §§ 6086, 6089, and 6091(d):

7                 (A) Replace all occurrences of “land use panel” with “council.”

8                 (B) Replace all occurrences of “environmental conservation  
9 department” with “department of environmental quality.”

10                (C) Replace all occurrences of “environmental court” with “council.”

11           (19) In 10 V.S.A. §§ 8005 through 8014, 8017, and 8018:

12                 (A) Revise all references to the secretary to refer to the director.

13                 (B) Delete all references to the land use panel.

14                 (C) Revise all references to the environmental court to refer to the  
15 environmental council.

16                 (D) Revise all references to an environmental judge to refer to the  
17 environmental council.

18           (20) In 10 V.S.A. § 8007(c), in the third sentence, replace “its website”  
19 with “the department’s website.”

20           (21) In 10 V.S.A. § 8014(c), in the first sentence, after “judicial,” insert  
21 “or quasi-judicial.”

1           (22) In 10 V.S.A. § 8501, replace all occurrences of “secretary of  
2 natural resources” with “departments of environmental quality, of fish and  
3 wildlife, and of forests, parks and recreation.”

4           (23) In 10 V.S.A. §§ 8503, 8504(a) and (c) through (k), and 8505(b),  
5 replace all occurrences of:

6           (A) “Secretary” with “department.”

7           (B) “Environmental court” with “environmental council.”

8           (C) “Environmental judge” with “environmental council.”

9           (D) “Natural resources board” with “environmental council.”

10          (b) In addition to subsection (a) of this section, the legislative council is  
11 directed to make all additional revisions to the existing Vermont Statutes  
12 Annotated necessary to effect this act in accordance with the following  
13 direction:

14          (1) When applicable, the terms “environmental court,” “natural  
15 resources board,” “land use panel of the natural resources board,” “land use  
16 panel,” “water resources panel of the natural resources board,” “water  
17 resources panel,” or “water resources board” in the Vermont Statutes  
18 Annotated shall be replaced by the term “environmental council.”

19          (2) When applicable, the terms “secretary of natural resources,” “agency  
20 of natural resources,” and “department of environmental conservation” and all

1 references to such secretary, agency, and department shall be replaced by the  
2 term “department of environmental quality,” except that:

3 (A) If the subject matter is the rulemaking authority of such  
4 secretary, agency, or department, then the replacement term shall be  
5 “environmental council.”

6 (B) If the subject matter refers to the position of the secretary of  
7 natural resources specifically, as opposed to referring to the secretary as a  
8 proxy for the agency of natural resources, then:

9 (i) The replacement term shall be “executive director of the  
10 environmental council” if the subject matter involves day-to-day  
11 administration or participation on a group, board, or commission other than the  
12 environmental council.

13 (ii) The replacement term shall be “environmental council” if the  
14 subject matter involves providing overall direction or setting policy.

15 (C) If the subject matter clearly relates to the authority or programs  
16 of either the department of fish and wildlife or of forests, parks and recreation,  
17 the replacement term shall be, as appropriate, “department of fish and wildlife”  
18 or “department of forests, parks and recreation.”

19 (3) When applicable, the following definitions shall be inserted into  
20 chapters, subchapters, or sections referring to the former agency of natural  
21 resources and department of environmental conservation:



1           (A) “Council” means the environmental council created under  
2           3 V.S.A. chapter 51.

3           (B) “Department” means the department of environmental quality  
4           created under 3 V.S.A. chapter 51 or its duly authorized representative.

5           Sec. 60. TRANSITION AND IMPLEMENTATION

6           (a) Continued jurisdiction over appeals. Notwithstanding the repeal of its  
7           jurisdictional authority to hear appeals of acts or decisions of the district  
8           commissions, district coordinators, and the secretary of natural resources, or  
9           under 24 V.S.A. chapter 117, the environmental court shall continue to have  
10          jurisdiction to complete its consideration of any such act or appeal that is  
11          pending before it as of February 1, 2011 if, with respect to such act or appeal,  
12          mediation or discovery has commenced, a dispositive motion has been filed, or  
13          a trial has begun.

14          (b) Existing rules. All rules adopted by the natural resources board and the  
15          department of environmental conservation prior to February 1, 2011 shall be  
16          deemed to be rules adopted by the environmental council and the department  
17          of environmental quality and shall remain in effect until amended or repealed  
18          by the environmental council.

19          (c) Pending rules. Notwithstanding the repeal of its enabling authority, the  
20          water resources panel shall continue to exist and have jurisdiction with its  
21          preexisting membership to complete its consideration of any proposed rules for

1 which, by February 1, 2011, the period for submitting public comments has  
2 been completed. Upon adoption, all such rules shall be deemed to be rules  
3 adopted by the environmental council and shall remain in effect until amended  
4 or repealed by the environmental council.

5 Sec. 61. APPROPRIATIONS; POSITIONS; INITIAL APPOINTMENT OF  
6 ENVIRONMENTAL COUNCIL; SUPERVISION OF  
7 TRANSITION

8 (a) Effective February 1, 2011, the following positions are transferred to  
9 the environmental council and department of environmental quality:

10 (1) The two environmental judges and all regular employees of the  
11 environmental court.

12 (2) The chair and all regular employees of the natural resources board.

13 (3) The secretary and deputy secretary of natural resources, the  
14 commissioner of environmental conservation, all regular employees of the  
15 agency of natural resources' central office and administrative services  
16 division, the department of environmental conservation, and the division of  
17 geology and mineral resources, and any other regular employees of the agency  
18 of natural resources who are not employees of the departments of fish and  
19 wildlife and of forests, parks and recreation.

20 (b) Effective February 1, 2011, each of the following is transferred to the  
21 environmental council and department of environmental quality:

1           (1) Except for appropriations and funds specifically of the departments  
2 of fish and wildlife and of forests, parks and recreation, all appropriations and  
3 funds associated with the agencies, department, entities, and employees  
4 described in subdivisions (a)(1) through (3) of this section, including wages,  
5 personal service expenses, and operating expenses.

6           (2) Except for property that is specifically of the departments of fish  
7 and wildlife and of forests, parks and recreation, all property of the agencies,  
8 departments, and entities described in subdivisions (a)(1) through (3) of this  
9 section.

10          (c) Effective February 1, 2011:

11           (1) The chair and members of the environmental council shall occupy  
12 the following positions transferred to that council by this act: the former chair  
13 of the natural resources board, two environmental judges, the secretary of  
14 natural resources, and one associate general counsel of the natural resources  
15 board.

16           (2) The executive director of the environmental council shall occupy  
17 the position of the former commissioner of environmental conservation.

18           (3) The department of environmental quality's director of state land use  
19 pursuant to 3 V.S.A. § 2802(b) shall occupy the position of the former chief  
20 coordinator of the natural resources board.

1           (4) The department of environmental quality's director of planning  
2           pursuant to 3 V.S.A. § 2877 shall occupy the position of the former director of  
3           policy, regulatory and legislative affairs of the agency of natural resources.

4           (5) The counsel appointed pursuant to 3 V.S.A. § 2287(b) shall occupy  
5           the position of the former general counsel of the natural resources board.

6           (6) The department's chief environmental counsel pursuant to 3 V.S.A.  
7           § 2281 shall occupy the position of the former general counsel to the agency  
8           of natural resources.

9           (7) The positions of natural resources board associate general counsel  
10          for enforcement and permit compliance officer are transferred to the  
11          department of environmental quality's division of environmental enforcement,  
12          and the position of one other natural resources board associate general counsel  
13          is transferred to the department's office of environmental counsel.

14          (8) The council's two staff scientists appointed pursuant to 3 V.S.A.  
15          § 2287(b) shall occupy the two positions of environmental court law clerk and  
16          the positions shall be reclassified accordingly.

17          (9) One natural resources board administrative secretary and the  
18          environmental court's court manager and case manager are transferred to the  
19          environmental council to support its quasi-judicial and other proceedings.

1           (10) The position of private secretary to the secretary of natural  
2 resources shall become the position of secretary to the chair of the  
3 environmental council.

4           (11) The position of private secretary to the commissioner of  
5 environmental conservation shall become the position of secretary to the  
6 department's executive director.

7           (12) One natural resources board administrative secretary position is  
8 transferred to the department's division of environmental enforcement to be  
9 an environmental enforcement officer, and the position shall be reclassified  
10 accordingly. This position shall be in addition to all environmental  
11 enforcement officer positions in existence as of October 1, 2009.

12           (13) One position from the department of economic, housing and  
13 community development is transferred to the department of environmental  
14 quality's planning division to coordinate the division's outreach to and work  
15 with other state agencies and regional and local entities and to assist in the  
16 division's provision of training and technical assistance to municipal  
17 commissions and boards.

18           (14) The positions of deputy secretary of natural resources and  
19 executive assistant to the secretary of natural resources are eliminated.

20           (d) As of July 1, 2011, any remaining positions of the former  
21 environmental court and natural resources board not included in subsection (c)

1 of this section are eliminated. The environmental council may continue those  
2 positions in existence through June 30, 2011, as it may deem necessary to  
3 support the completion of work by the former environmental court and natural  
4 resources board under the transition for which this act provides.

5 (e) Any position that was in existence as of October 1, 2009, and described  
6 in subsection (c) of this section and that is abolished or eliminated prior to  
7 February 1, 2011, shall be re-created effective February 1, 2011. This  
8 re-creation shall apply regardless of whether the position was vacant as of  
9 October 1, 2009. The same re-creation shall apply to all environmental  
10 enforcement officer positions of the department of environmental  
11 conservation.

12 (f) By August 1, 2010, the governor, speaker of the house, and president  
13 pro tempore of the senate shall appoint the members of the environmental  
14 appointments committee created under 3 V.S.A. § 2821(b).

15 (g) No later than October 1, 2010, the environmental appointments  
16 committee shall make the initial appointment of the chair and members of the  
17 environmental council in accordance with 3 V.S.A. § 2821(b). Each such  
18 appointment shall be subject to senate confirmation during the subsequent  
19 legislative session. The period between October 1, 2010, and February 1,  
20 2011, shall be added to the initial terms of the chair and the council members  
21 as provided under 3 V.S.A. § 2821(b). During this period:

1           (1) The environmental council shall appoint an executive director of the  
2           department of environmental quality.

3           (2) As it deems reasonably necessary to effect the transition under this  
4           section, the environmental council shall have authority to reorganize,  
5           reclassify, recruit, and appoint personnel for positions transferred to it and the  
6           department of environmental quality under this act. This authority shall be  
7           subject to subsection (c) of this section and shall continue after February 1,  
8           2011.

9           (3) The environmental council shall take all actions necessary to assure  
10           the delegation to the department of environmental quality of federal programs  
11           previously administered by the department of environmental conservation.

12           (4) The environmental council shall have the authority to direct the  
13           agency of natural resources, the department of environmental conservation,  
14           and the natural resources board to take such actions as the environmental  
15           council deems reasonably necessary to effect the transition under this section.  
16           The environmental council shall the same authority to direct the  
17           environmental court to take administrative or other nonjudicial action, but  
18           only insofar as necessary to effect the transition.

19           (h) Effective February 1, 2011, the environmental council shall occupy  
20           such office space as it requires in the center building of the state's office  
21           complex in Waterbury.

1 Sec. 62. EFFECTIVE DATES

2 This act shall take effect on February 1, 2011, except that:

3 (1) Secs. 60 (transition and implementation) and 61 (appropriations,  
4 positions, initial council appointment, supervision of transition) and this  
5 section shall take effect on passage.

6 (2) In Sec. 4, 3 V.S.A. § 2821(b) through (f) (appointment of  
7 environmental council) shall take effect on July 1, 2010 to the extent  
8 necessary for implementation of Sec. 61 of this act.

9 (3) Sec. 27 (changes to Act 250 presumption statute) shall take effect  
10 on February 1, 2012.

11 (4) In Sec. 28, 10 V.S.A. § 6086b(1) through (8) (permit consolidation)  
12 shall take effect on February 1, 2012.