

1 TO THE HONORABLE SENATE:

2 The Committee on Natural Resources and Energy to which was referred
3 Senate Bill No. 213 entitled “An act relating to the regulation of wetlands,
4 river corridor development, and dam safety” respectfully reports that it has
5 considered the same and recommends that the bill be amended by striking out
6 all after the enacting clause and inserting in lieu thereof the following:

7 * * * Wetlands * * *

8 Sec. 1. 10 V.S.A. § 901 is amended to read:

9 § 901. WATER RESOURCES AND WETLANDS MANAGEMENT

10 POLICY

11 It is hereby declared to be the policy of the State that:

12 (1) the water resources of the State shall be protected, regulated, and,
13 where necessary, controlled under authority of the State in the public interest
14 and to promote the general welfare;

15 (2) the wetlands of the State shall be protected, regulated, and restored
16 so that Vermont achieves a net gain of wetlands acreage; and

17 (3) regulation and management of the water resources of the State,
18 including wetlands, should be guided by science, and authorized activities in
19 water resources and wetlands should have a net environmental benefit to the
20 State.

1 **Sec. 2.** 10 V.S.A. § 902(13) is added to read:

2 (13) “Dam removal” has the same meaning as in section 1090 of this
3 title.

4 **Sec. 3.** 10 V.S.A. § 916 is amended to read:

5 § 916. ~~REVISION~~ UPDATE OF VERMONT SIGNIFICANT WETLANDS
6 INVENTORY MAPS

7 ~~The Secretary shall revise the Vermont significant wetlands inventory maps~~
8 ~~to reflect wetland determinations issued under section 914 of this title and~~
9 ~~rulemaking by the panel under section 915 of this title.~~

10 (a) On or before January 1, 2026, and annually thereafter, the Agency of
11 Natural Resources shall update the Vermont Significant Wetlands Inventory
12 (VSWI) maps and the Wetlands Advisory mapping layers for the Agency of
13 Natural Resources’ Natural Resources Atlas and as a shapefile on the Vermont
14 Geodata Portal. The annual updates to the VSWI shall include integration of
15 georeferenced shapefiles or similar files for all verified delineations performed
16 within the State and submitted to the Agency of Natural Resources as part of a
17 permit application, as well as a wetlands determination issued under section
18 914 of this title and rulemaking conducted pursuant to section 915 of this title.
19 The Wetland Advisory layer shall include integration of any additional town
20 specific inventories performed by consultants on the Agency’s Wetland

1 Consultant List if the consultant has presented the map to a municipality or the
2 Agency of Natural Resources.

3 (b) The Secretary of Natural Resources shall provide public notice of
4 changes to the VSWI map in the watershed where changes to the map are
5 made by posting notice in each town clerk’s office in the municipality where
6 wetland map changes are proposed, by publishing notice of the changes in
7 local newspapers and other media sources within the municipality, and by
8 posting notice of the updated map to the Environmental Notice Bulletin. The
9 Secretary shall not be required to provide notification to individual persons.

10 (c) On or before January 1, 2030, the Secretary of Natural Resources shall
11 complete High Quality National Wetlands Inventory (NWI) Plus level
12 mapping for all of the tactical basins in the State. The high-quality mapping
13 shall include a ground truthing component that is the best available practice.

14 (d) Once all tactical basins are mapped, updates shall occur on a five-year
15 cycle simultaneously with updates to the corresponding tactical basin plan.

16 (e) To assist in funding the mapping, the Secretary of Natural Resources
17 shall seek to leverage State funds with federal funds and private funding, with
18 assistance from nongovernmental partners if possible. If the Secretary of
19 Natural Resources does not obtain funding from federal funds or private
20 funding, the Secretary shall document any effort prior to ongoing effort to
21 obtain federal or private funding.

1 Sec. 4. 10 V.S.A. §§ 918 and 919 are added to read:

2 § 918. NET GAIN OF WETLANDS; STATE GOAL; RULEMAKING

3 (a) On or before July 1, 2025, the Secretary of Natural Resources shall
4 amend the Vermont Wetlands Rules to clarify that the goal of wetlands
5 regulation and management in the State is the net gain of wetlands to be
6 achieved through protection of existing wetlands and restoration of previously
7 developed wetlands. As a condition of a permit for activity in a wetland, the
8 Secretary shall require the net gain of wetlands. This condition shall not apply
9 to wetland, river, and flood plain restoration projects, including dam removals.

10 (b) The Vermont Wetlands Rules shall prioritize the protection of existing
11 intact wetlands from development. Where permitted activity within a wetland
12 that is larger than 5,000 square feet will cause adverse effects that cannot be
13 avoided, the Secretary shall mandate that the permit applicant restore, enhance,
14 or create wetlands or buffers to compensate for adverse effects on a wetland.
15 The amount of wetlands to be restored, enhanced, or created shall be
16 calculated, at a minimum, by determining the acreage or square footage of
17 wetlands adversely affected by the permitted activity and multiplying the
18 number of adversely affected acres or square feet by two, to result in ratio of
19 2:1 restoration to disturbance. Establishment of a buffer zone contiguous to a
20 wetland shall not substitute for the restoration, enhancement, or creation of
21 wetlands. Adverse effects on wetland buffers shall also be restored, enhanced,

1 or created at a ratio of 2:1 restoration to disturbance, as established on a case-
2 by-case, per project basis.

3 (c) At a minimum, the Wetlands Rules shall be revised to:

4 (1) Require an applicant for a wetland permit to restore and enhance any
5 loss of wetlands that is larger than 5,000 square feet caused by the project that
6 is subject to the permit application. Wetland, river, and floodplain restoration
7 projects, including dam removal, shall not require a wetland permit under this
8 rule.

9 (2) Incorporate the net gain rule into existing general permits and into
10 requirements for permits issued after July 1, 2025.

11 (3) Establish a set of parameters and ratios for the permittee-designed
12 restored wetlands, at not less than a 2:1 ratio, which shall include, at a
13 minimum, the following factors:

14 (A) the existing level of wetland function at the site prior to
15 mitigation or restoration of wetlands;

16 (B) the amount of wetland and wetland function lost as a result of the
17 project;

18 (C) how the wetland amounts and functions will be restored at the
19 proposed compensation site;

20 (D) the length of time before the compensation site will be fully
21 functional;

1 (E) the risk that the compensation project may not succeed;

2 (F) the differences in the location of the adversely affected wetland
3 and the wetland subject to compensation that affect the services and values
4 offered; and

5 (G) the requirement that permittees conduct five years of post-
6 restoration monitoring for the restored wetlands, at which time the Agency can
7 decide if further action is needed.

8 (d) When amending the Vermont Wetlands Rules under this section, the
9 Secretary shall establish a Vermont in-lieu fee (ILF) compensation program for
10 wetlands impacts that may be authorized as compensation for an adverse effect
11 on a wetland when the permittee cannot achieve restoration. The Secretary
12 may implement a Vermont ILF compensation program through agreements
13 with third-party entities such as the U.S. Army Corps of Engineers or
14 environmental organizations, provided that any ILF monetary compensation
15 authorized under the rules shall be expended on restoration, reestablishment,
16 enhancement, or conservation projects within the State at the HUC 8 level of
17 the adversely affected wetland when practicable.

18 § 919. WETLANDS PROGRAM REPORT

19 On or before April 30, 2025 and annually thereafter, the Agency of Natural
20 Resources shall submit to the House Committee on Environment and Energy

1 and to the Senate Committee on Natural Resources and Energy a report on the
2 status of the wetlands in the State. The report shall include:

3 (1) the acreage, location, and vegetative composition of Class II
4 wetlands and buffers impacted; the Class II wetlands and buffers that were
5 restored; the Class II wetlands converted to other uses, including permanent
6 development and cropland; and an assessment of the functionality of any
7 created wetlands over the past year compared with the previous five-year
8 period;

9 (2) an updated mitigation summary of the extent of wetlands restored
10 on-site compared with compensation performed off-site, in-lieu fees paid, or
11 conservation;

12 (3) the number of site visits and technical assistance calls conducted by
13 the Agency of Natural Resources, the number of permits processed by the
14 Agency, and any enforcement actions that were taken by the Agency or the
15 Attorney General's office in the previous year;

16 (4) an analysis of historical trends of wetlands, including data analyzing
17 the projects for which wetland permits were issued by sector;

18 (5) the results of each VSWI Mapping Project, including additional
19 acres mapped, dominant vegetative composition, connected tributaries,
20 locations of confirmed ground truthing, if applicable, and any other hydrologic
21 soil or vegetative observations or trends noted; and

1 (6) relevant updates related to Class I and Class II wetlands to include
2 additional wetlands identified under these categories, their composition and
3 general characteristics, potential threats, patterns of use, and other unique
4 features.

5 Sec. 5. 10 V.S.A. § 1274(a) is amended to read:

6 (a) Notwithstanding any other provision or procedure set forth in this
7 chapter, if the Secretary finds that any person has discharged or is discharging
8 any waste or damaging the ecological functions of wetlands in violation of this
9 chapter or chapter 37 of this title, or that any person has failed to comply with
10 any provisions of any order or permit issued in accordance with this chapter or
11 chapter 37 of this title, the Secretary may bring suit in the Superior Court in
12 any county where the discharge, damage to wetlands, or noncompliance has
13 occurred to enjoin the discharge ~~and to~~ obtain compliance, and mandate
14 restoration of damaged wetlands. The suit shall be brought by the Attorney
15 General in the name of the State. The court may issue a temporary injunction
16 or order in any such proceedings and may exercise all the plenary powers
17 available to it in addition to the power to:

18 (1) Enjoin future discharges.

19 (2) Order the design, construction, installation, or operation of pollution
20 abatement facilities or alternate waste disposal systems.

1 (3) Order the restoration of damaged wetlands. Wetlands damaged in
2 violation of chapter 37 of this title may be ordered restored, enhanced, or
3 created.

4 (4) Order the removal of all wastes discharged and the restoration of
5 water quality.

6 ~~(4)~~(5) Fix and order compensation for any public property destroyed,
7 damaged, or injured or any aquatic or terrestrial biota harmed or destroyed.
8 Compensation for fish taken or destroyed shall be deposited into the Fish and
9 Wildlife Fund.

10 ~~(5)~~(6) Assess and award punitive damages.

11 ~~(6)~~(7) Levy civil penalties not to exceed \$10,000.00 a day for each day
12 of violation.

13 ~~(7)~~(8) Order reimbursement to any agency of federal, State, or local
14 government from any person whose discharge caused governmental
15 expenditures.

16 Sec. 6. APPROPRIATIONS

17 In addition to other funds appropriated to the Agency of Natural Resources
18 in fiscal year 2025, the amount of \$1,000,000.00 shall be appropriated from the
19 General Fund, of which \$500,000.00 shall be used to fund wetlands mapping
20 required under this act, and \$500,000.00 shall be used to hire additional

1 Agency of Natural Resources staff as necessary to comply with the
2 requirements of Secs. 1–4 of this act.

3 * * * Development in River Corridors * * *

4 Sec. 7. 10 V.S.A. § 752 is amended to read:

5 § 752. DEFINITIONS

6 ~~For the purpose of~~ As used in this chapter:

7 * * *

8 (2) “Development,” for the purposes of flood hazard area management
9 and regulation, ~~shall have~~ has the same meaning as “development” under
10 44 C.F.R. § 59.1.

11 (3) “Flood hazard area” ~~shall have~~ has the same meaning as “area of
12 special flood hazard” under 44 C.F.R. § 59.1.

13 * * *

14 (8) ~~“Uses exempt from municipal regulation” means land use or~~
15 ~~activities that are exempt from municipal land use regulation under 24 V.S.A.~~
16 ~~chapter 117. [Repealed.]~~

17 * * *

18 (13) “Existing settlement” has the same meaning as in section 6001 of
19 this title.

20 (14) “Mapped river corridor” means a river corridor drawn and adopted
21 by the Secretary of Natural Resources as part of the statewide River Corridor

1 Base Map Layer in accordance with the Flood Hazard Area and River Corridor
2 Protection Procedure for rivers and streams with a watershed area greater than
3 two square miles.

4 Sec. 8. 10 V.S.A. § 754 is amended to read:

5 § 754. FLOOD HAZARD AREA AND MAPPED RIVER CORRIDOR

6 ~~RULES; USES EXEMPT FROM MUNICIPAL REGULATION~~

7 (a) Rulemaking authority.

8 (1) ~~On or before November 1, 2014, the Secretary shall adopt rules~~
9 ~~pursuant to 3 V.S.A. chapter 25 that establish requirements for the issuancee~~
10 ~~and enforcement of permits applicable to:~~

11 ~~(i) uses exempt from municipal regulation that are located within a~~
12 ~~flood hazard area or river corridor of a municipality that has adopted a flood~~
13 ~~hazard bylaw or ordinance under 24 V.S.A. chapter 117; and~~

14 ~~(ii) State owned and operated institutions and facilities that are~~
15 ~~located within a flood hazard area or river corridor~~ On or before January 1,
16 2026, the Secretary shall adopt rules pursuant to 3 V.S.A. chapter 25 that
17 establish requirements for issuing and enforcing permits for development
18 within a flood hazard area or a mapped river corridor in the State.

19 * * *

20 (b) Required rulemaking content. The rules shall:

1 (1) set forth the requirements necessary to ensure ~~uses exempt from~~
2 ~~municipal regulation~~ are development is regulated by the State in order to
3 comply with the regulatory obligations set forth under the National Flood
4 Insurance Program;

5 (2) be designed to ensure that the State and municipalities meet
6 community eligibility requirements for the National Flood Insurance Program;

7 (3) establish the requirements and process for a municipality to be
8 delegated the State’s permitting authority for development in a flood hazard
9 area or mapped river corridor that is not exempt from municipal regulation
10 when the municipality has adopted a flood hazard bylaw or ordinance under
11 24 V.S.A. chapter 117 that has been approved by the Secretary and that meets
12 or exceeds the requirements established under State rule; and

13 (4) set forth a process, in collaboration with the Agency of Commerce
14 and Community Development and the Vermont Regional Planning
15 Commissions, for amending the statewide River Corridor Base Map to identify
16 areas within existing settlements suitable for development that will not cause
17 or contribute to increases in fluvial erosion hazards.

18 (c) Discretionary rulemaking. The rules required under this section may
19 establish requirements that exceed the requirements of the National Flood
20 Insurance Program ~~for uses exempt from municipal regulation~~, including
21 requirements for the maintenance of existing native riparian vegetation,

1 provided that any rules adopted under this subsection that exceed the minimum
2 requirements of the National Flood Insurance Program shall be designed to
3 prevent or limit a risk of harm to life, property, or infrastructure from flooding.

4 * * *

5 (f) Permit requirement. ~~A Beginning on July 1, 2026, a person shall not~~
6 ~~commence or conduct a use exempt from municipal regulation development in~~
7 ~~a flood hazard area or mapped river corridor in a municipality that has adopted~~
8 ~~a flood hazard area bylaw or ordinance under 24 V.S.A. chapter 117 or~~
9 ~~commence construction of a State-owned and-operated institution or facility~~
10 ~~located within a flood hazard area or river corridor,~~ without a permit issued
11 under the rules required under subsection (a) of this section by the Secretary or
12 by a State agency delegated permitting authority under subsection (g) of this
13 section. When an application is filed under this section, the Secretary or
14 delegated State agency shall proceed in accordance with chapter 170 of this
15 title.

16 * * *

17 Sec. **9**. TRANSITION; IMPLEMENTATION

18 (a) The Secretary of Natural Resources shall adopt the rules required in
19 Sec. **8** of this act, 10 V.S.A. § 754, on or before January 1, 2026. The effective
20 date of the rules shall be July 1, 2026.

1 § 1079. PURPOSE

2 It is the purpose of this chapter to protect public safety and provide for the
3 public good through the inventory, inspection, and evaluation of dams in the
4 State.

5 § 1080. DEFINITIONS

6 As used in this chapter:

7 (1) “Department” means the Department of Environmental
8 Conservation.

9 * * *

10 (4) “Engineer” means a professional engineer licensed under Title 26
11 who has experience in the design and investigation of dams.

12 * * *

13 (6)(A) “Dam” means any artificial barrier, including its appurtenant
14 works, that is capable of impounding water, other liquids, or accumulated
15 sediments.

16 (B) “Dam” includes an artificial barrier that meets all of the
17 following:

18 (i) previously was capable of impounding water, other liquids, or
19 accumulated sediments;

20 (ii) was partially breached; and

21 (iii) has not been properly removed or mitigated.

1 (C) “Dam” ~~shall~~ does not mean:

2 (i) barriers or structures created by beaver or any other wild
3 animal as that term is defined in section 4001 of this title;

4 (ii) transportation infrastructure that has no normal water storage
5 capacity and that impounds water only during storm events;

6 (iii) an artificial barrier at a stormwater management structure that
7 is regulated by the Agency of Natural Resources under chapter 47 of this title;

8 (iv) an underground or elevated tank to store water otherwise
9 regulated by the Agency of Natural Resources;

10 (v) an agricultural waste storage facility regulated by the Agency
11 of Agriculture, Food and Markets under 6 V.S.A. chapter 215; or

12 (vi) any other structure identified by the Department by rule.

13 (7) “Federal dam” means:

14 (A) a dam owned by the United States; or

15 (B) a dam subject to a Federal Energy Regulatory Commission
16 license or exemption.

17 (8) “Intake structure” means a dam that is constructed and operated for
18 the primary purposes of minimally impounding water for the measurement and
19 withdrawal of streamflow to ensure use of the withdrawn water for
20 snowmaking, potable water, irrigation, or other purposes approved by the
21 Department.

1 (9) “Nonfederal dam” means a dam that is not a federal dam.

2 (10) “Harm” means any personal injury or property damage.

3 (11) “Dam removal” means a river restoration and resilience project that
4 removes all or part of a dam.

5 § 1081. JURISDICTION OF DEPARTMENT AND PUBLIC UTILITY
6 COMMISSION

7 (a) Powers and duties. Unless otherwise provided, the powers and duties
8 authorized by this chapter shall be exercised by the Department, ~~except that the~~
9 ~~Public Utility Commission shall exercise those powers and duties over~~
10 ~~nonfederal dams and projects that relate to or are incident to the generation of~~
11 ~~electric energy for public use or as a part of a public utility system. Nonfederal~~
12 ~~dams at which the generation of electric energy is subject to licensing~~
13 ~~jurisdiction under the Federal Power Act, 16 U.S.C. chapter 12, subchapter 1,~~
14 ~~shall not be under the jurisdiction of the Public Utility Commission of~~
15 Environmental Conservation.

16 (b) Transfer of jurisdiction. ~~Jurisdiction over a nonfederal dam is~~
17 ~~transferred from the Department to the Public Utility Commission when the~~
18 ~~Public Utility Commission receives an application for a certificate of public~~
19 ~~good for electricity generation at that dam. Jurisdiction over a federal dam is~~
20 transferred to the Department when the license or exemption for a federal dam
21 expires or is otherwise lost; ~~when a certificate of public good is revoked or~~

1 ~~otherwise lost; or when the Public Utility Commission denies an application~~
2 ~~for a certificate of public good.~~

3 ~~(c) Transfer of records. Upon transfer of jurisdiction as set forth in~~
4 ~~subsection (b) of this section and upon written request, the State agency having~~
5 ~~former jurisdiction over a dam shall transfer copies of all records pertaining to~~
6 ~~the dam to the agency acquiring jurisdiction.~~

7 § 1082. AUTHORIZATION

8 (a) No person shall construct, enlarge, raise, lower, remodel, reconstruct, or
9 otherwise alter any nonfederal dam, pond, or impoundment or other structure
10 that is or will be capable of impounding more than 500,000 cubic feet of water
11 or other liquid after construction or alteration, or remove, breach, or otherwise
12 lessen the capacity of an existing nonfederal dam that is or was capable of
13 impounding more than 500,000 cubic feet within or along the borders of this
14 State where land in this State is proposed to be overflowed, or at the outlet of
15 any body of water within this State, unless authorized by the ~~State agency~~
16 ~~having jurisdiction so to do~~ Department, provided that an application for
17 activities that require authorization under 30 V.S.A. § 248 also shall be
18 approved by the Public Utility Commission. However, in the matter of flood
19 control projects where cooperation with the federal government is provided for
20 by the provisions of section 1100 of this title, that section shall control.

1 (b) For the purposes of this chapter, the volume a dam or other structure is
2 capable of impounding is the volume of water or other liquid, including any
3 accumulated sediments, controlled by the structure with the water or liquid
4 level at the top of the lowest nonoverflow part of the structure.

5 (c) An intake structure in existence on July 1, 2018 that continues to
6 operate in accordance with a valid Department permit or approval that contains
7 requirements for inspection and maintenance subject to section 1105 of this
8 title shall have a rebuttable presumption of compliance with the requirements
9 of this chapter and rules adopted under this chapter, provided that no
10 presumption of compliance shall apply if one or both of the following occur on
11 or after July 1, 2018:

12 (1) the owner or operator of the intake takes an action that requires
13 authorization under this section; or

14 (2) the Department issues an order under section 1095 of this title
15 directing reconstruction, repair, removal, breaching, draining, or other action it
16 considers necessary to improve the safety of the dam.

17 § 1083. APPLICATION

18 (a) Any person who proposes to undertake an action subject to regulation
19 pursuant to section 1082 of this title shall apply in writing to the ~~State agency~~
20 ~~having jurisdiction~~ Department. The application shall set forth:

- 1 (1) the location; the height, length, and other dimensions; and any
2 proposed changes to any existing dam;
- 3 (2) the approximate area to be overflowed and the approximate number
4 of or any change in the number of cubic feet of water to be impounded;
- 5 (3) the plans and specifications to be followed in the construction,
6 remodeling, reconstruction, altering, lowering, raising, removal, breaching, or
7 adding to;
- 8 (4) any change in operation and maintenance procedures; and
- 9 (5) other information that the ~~State agency having jurisdiction~~
10 Department considers necessary to review the application.

11 (b) The plans and specifications shall be prepared under the supervision of
12 an engineer.

13 § 1084. DEPARTMENT OF FISH AND WILDLIFE; INVESTIGATION

14 The Commissioner of Fish and Wildlife shall investigate the potential
15 effects on fish and wildlife habitats of any proposal subject to section 1082 of
16 this title and shall certify the results to the ~~State agency having jurisdiction~~
17 Department prior to any hearing or meeting relating to the determination of
18 public good and public safety.

19 § 1085. NOTICE OF APPLICATION

20 Upon receipt of the application required by section 1082 of this title, the
21 ~~State agency having jurisdiction~~ Department shall give notice to the legislative

1 body of each municipality in which the dam is located and to all interested
2 persons. The Department shall provide notice and an opportunity for public
3 comment in accordance with chapter 170 of this title.

4 ~~(1) The Department shall proceed in accordance with chapter 170 of this~~
5 ~~title.~~

6 ~~(2) For any project subject to its jurisdiction under this chapter, the~~
7 ~~Public Utility Commission shall hold a hearing on the application. The~~
8 ~~purpose of the hearing shall be to determine whether the project serves the~~
9 ~~public good as defined in section 1086 of this title and provides adequately for~~
10 ~~the public safety. The hearing shall be held in a municipality in the vicinity of~~
11 ~~the proposed project and may be consolidated with other hearings, including~~
12 ~~hearings under 30 V.S.A. § 248 concerning the same project. Notice shall be~~
13 ~~given at least 10 days before the hearing to interested persons by posting in the~~
14 ~~municipal offices of the towns in which the project will be completed and by~~
15 ~~publishing in a local newspaper.~~

16 § 1086. DETERMINATION OF PUBLIC GOOD; CERTIFICATES

17 (a) “Public good” means the greatest benefit of the people of the State. In
18 determining whether the public good is served, the ~~State agency having~~
19 ~~jurisdiction~~ Department shall give due consideration to, among other things,
20 the effect the proposed project will have on:

- 1 (1) the quantity, kind, and extent of cultivated agricultural land that may
- 2 be rendered unfit for use by or enhanced by the project, including both the
- 3 immediate and long-range agricultural land use impacts;
- 4 (2) scenic and recreational values;
- 5 (3) fish and wildlife;
- 6 (4) forests and forest programs;
- 7 (5) [Repealed.]
- 8 (6) the existing uses of the waters by the public for boating, fishing,
- 9 swimming, and other recreational uses;
- 10 (7) the creation of any hazard to navigation, fishing, swimming, or other
- 11 public uses;
- 12 (8) the need for cutting clean and removal of all timber or tree growth
- 13 from all or part of the flowage area;
- 14 (9) the creation of any public benefits;
- 15 (10) attainment of the Vermont water quality standards;
- 16 (11) any applicable State, regional, or municipal plans;
- 17 (12) municipal grand lists and revenues;
- 18 (13) public safety; and
- 19 (14) in the case of the proposed removal of a dam that formerly related
- 20 to or was incident to the generation of electric energy, but that was not subject

1 to a memorandum of understanding dated prior to January 1, 2006 relating to
2 its removal, the potential for and value of future power production.

3 (b) If the ~~State agency having jurisdiction~~ Department finds that the project
4 proposed under section 1082 of this title will serve the public good, and, in
5 case of any waters designated by the Secretary as outstanding resource waters,
6 will preserve or enhance the values and activities sought to be protected by
7 designation, the agency shall issue its order approving the application. The
8 order shall include conditions for attainment of water quality standards, as
9 determined by the Agency of Natural Resources, and such other conditions as
10 the ~~agency having jurisdiction~~ Department considers necessary to protect any
11 element of the public good listed in subsection (a) of this section. Otherwise it
12 shall issue its order disapproving the application.

13 (c) The ~~State agency having jurisdiction~~ Department shall provide the
14 applicant and interested persons with copies of its order.

15 (d) In the case of a proposed removal of a dam that is under the jurisdiction
16 of the Department and that formerly related to or was incident to the generation
17 of electric energy but that was not subject to a memorandum of understanding
18 dated before January 1, 2006 relating to its removal, the Department shall
19 consult with the Department of Public Service regarding the potential for and
20 value of future power production at the site.

21 § 1087. REVIEW OF PLANS AND SPECIFICATIONS

1 For any proposal subject to authorization under section 1082 of this title, the
2 ~~State agency having jurisdiction~~ Department shall ~~employ~~ require an engineer
3 to investigate the property, review the plans and specifications, and make
4 additional investigations as the ~~State agency having jurisdiction~~ Department
5 considers necessary to ensure that the project adequately provides for the
6 public safety. The engineer conducting an investigation under this section
7 shall be an employee of the Department or shall be operating under the
8 supervision of the Department as an independent consultant. The engineer
9 shall report ~~his or her~~ the engineer's findings to the ~~State agency having~~
10 ~~jurisdiction~~ Department.

11 § 1089. EMPLOYMENT OF ENGINEER

12 With the approval of the Governor, the ~~State agency having jurisdiction~~
13 Department may ~~employ~~ require an engineer to investigate the property,
14 review the plans and specifications, and make such additional investigation as
15 the ~~State agency~~ Department shall deem necessary, ~~and such~~. The engineer
16 conducting an investigation under this section shall be an employee of the
17 Department or shall be operating under the supervision of the Department as
18 an independent consultant. The engineer shall report to the ~~State agency~~ ~~his or~~
19 ~~her~~ Department the engineer's findings in respect thereto and the Department
20 shall approve or disapprove the findings.

21 § 1090. CONSTRUCTION SUPERVISION

1 The construction, alteration, or other action authorized in section 1086 of
2 this title shall be supervised by an engineer employed by the applicant. Upon
3 completion of the authorized project, the engineer shall certify to the ~~agency~~
4 ~~having jurisdiction~~ Department that the project has been completed in
5 conformance with the approved plans and specifications.

6 § 1091. LIABILITY FOR DAM BREACH

7 Any person who owns legal title to a dam or the owner of land on which a
8 dam is located shall be held strictly, jointly, and severally liable for harm
9 caused by the breach of a dam, provided:

10 (1) a dam has been classified as a significant or high hazard potential
11 dam by the Department; or

12 (2) the person who owns legal title to a dam or the owner of land on
13 which a dam is located is not in full compliance with any Department rules
14 related to dam safety, including rules that set standards for dam design,
15 construction, and maintenance to protect public safety.

16 § 1095. UNSAFE DAM; PETITION; HEARING; EMERGENCY

17 (a) On receipt of a petition signed by ~~no~~ not fewer than ~~ten~~ 10 interested
18 persons or the legislative body of a municipality, the ~~State agency having~~
19 ~~jurisdiction~~ Department shall, or upon its own motion it may, institute
20 investigations by an engineer as described in section 1087 of this title
21 regarding the safety of any existing nonfederal dam or portion of the dam of

1 any size. ~~The agency may fix a time and place for hearing and shall give~~
2 ~~notice in the manner it directs to all interested persons. The engineer shall~~
3 ~~present his or her findings and recommendations at the hearing. After the~~
4 ~~hearing, if if the agency finds that the nonfederal dam or portion of the dam as~~
5 ~~maintained or operated is unsafe or is a menace to people or property above or~~
6 ~~below the dam, it shall issue an order directing reconstruction, repair, removal,~~
7 ~~breaching, draining, or other action it considers necessary to improve the safety~~
8 ~~of the dam sufficiently to protect life and property as required by the State~~
9 ~~agency having jurisdiction Department.~~

10 (b) If, upon the expiration of ~~such a~~ a date as may be ordered, the person
11 owning legal title to ~~such the~~ the dam or the owner of the land on which the dam is
12 located has not complied with the order directing the reconstruction, repair,
13 breaching, removal, draining, or other action of ~~such the~~ the unsafe dam, the State
14 ~~agency having jurisdiction may petition the Superior Court in the county in~~
15 ~~which the dam is located to enforce its order or exercise the right of eminent~~
16 ~~domain to acquire the rights that may be necessary to effectuate a remedy as~~
17 ~~the public safety or public good may require. If the order has been appealed,~~
18 ~~the court may prohibit the exercise of eminent domain by the State agency~~
19 ~~having jurisdiction Department pending disposition of the appeal Department~~
20 ~~may take further enforcement action, including the levying of fines for~~
21 ~~noncompliance.~~

1 (c) If, upon completion of the investigation described in subsection (a) of
2 this section, the ~~State agency having jurisdiction~~ Department considers the dam
3 to present an imminent threat to human life or property, it shall take whatever
4 action it considers necessary to protect life and property and subsequently shall
5 conduct the hearing described in subsection (a) of this section.

6 § 1099. APPEALS

7 (a) Appeals of any act or decision of the Department under this chapter
8 shall be made in accordance with chapter 220 of this title.

9 (b) ~~Appeals from actions or orders of the Public Utility Commission may~~
10 ~~be taken in the Supreme Court in accord with 30 V.S.A. § 12.~~

11 * * *

12 § 1105. INSPECTION OF DAMS

13 (a) Inspection; schedule. All nonfederal dams in the State shall be
14 inspected according to a schedule adopted by rule by the ~~State agency having~~
15 ~~jurisdiction over the dam~~ Department.

16 (b) Dam inspection. A nonfederal dam in the State shall be inspected under
17 one or both of the following methods:

18 (1) The ~~State agency having jurisdiction over a dam~~ Department may
19 employ an engineer to make periodic inspections of nonfederal dams in the
20 State to determine their condition and the extent, if any, to which they pose a
21 possible or probable threat to life and property.

1 (2) The ~~State agency having jurisdiction~~ Department shall adopt rules
2 pursuant to 3 V.S.A. chapter 25 to require an adequate level of inspection by
3 an independent engineer.

4 (c) Dam safety reports. If a dam inspection report is completed by the
5 ~~State agency having jurisdiction, the agency~~ Department, the Department shall
6 provide the person owning legal title to the dam or the owner of the land on
7 which the dam is located with a copy of the inspection report and shall make
8 all inspection reports available on the Department website for public review.

9 § 1106. ~~UNSAFE DAM~~ SAFETY REVOLVING LOAN FUND

10 (a) There is hereby established a special fund to be known as the Vermont
11 ~~Unsafe Dam~~ Safety Revolving Loan Fund that shall be used to provide ~~grants~~
12 ~~and loans to municipalities, nonprofit entities, and private individuals~~ low or
13 zero interest loans, including subsidized loans as established under subsection
14 (c) of this section and the rules adopted under section 1110 of this title,
15 pursuant to rules adopted by the Agency of Natural Resources, for the
16 reconstruction, repair, removal, breaching, draining, or other action necessary
17 to reduce the ~~threat~~ risk of a dam ~~or portion of a dam determined to be unsafe~~
18 ~~pursuant to section 1095 of this chapter.~~

19 (b) At a minimum, to be eligible for a Dam Safety Loan, the dam shall
20 meet all of the following conditions:

1 (1) Emergency funding. To provide emergency funding for critical,
2 time-sensitive temporary safety or risk reduction measures such as reservoir
3 drawdown, partially or fully breaching the dam, stabilization or buttressing of
4 the dam, including engineering and emergency action planning activities.

5 (A) Dams under the regulatory jurisdiction of the Dam Safety
6 Program, including dams owned by the State of Vermont.

7 (B) To be eligible, a dam must be in danger of imminent failure that
8 would harm persons or property, require immediate risk reduction measures to
9 protect persons or property downstream, or be a dam found to be unsafe or a
10 menace to public safety under section 1095 of this title. The Dam Safety
11 Program shall be able to access the fund on behalf of owners in cases of
12 emergency, immediate need, or in the case of unwilling or unable dam owners.

13 (C) Only time-sensitive, temporary safety and risk reduction
14 measures are eligible for a loan subsidy for emergency funding issued under
15 this subdivision (b)(1).

16 (2) Nonemergency funding. For permanent safety or risk reduction
17 projects such as repair, rehabilitation, or removal, including engineering,
18 analyses, and design.

19 (A) Dams under the regulatory jurisdiction of the Dam Safety
20 Program, excluding dams owned by the State of Vermont.

1 (B) To be eligible, a dam must be classified as a significant or high
2 hazard potential dam and in fair, poor, or unsatisfactory condition based on the
3 last periodic or comprehensive inspection.

4 (C) For repair or rehabilitation projects, the dam owner shall provide
5 an operation and maintenance and dam safety compliance schedule as well as
6 financial information to show sufficient resources are available to maintain the
7 dam and comply with the dam safety rules after the completion of repairs or
8 the rehabilitation project.

9 (D) For funding for construction of repair, rehabilitation, or removal,
10 the applicant shall provide proof that applicable local, State, and federal
11 permits have been obtained, including the State Dam Safety Order.

12 (E) To be eligible for nonemergency funding, an alternatives analysis
13 of dam repair, rehabilitation, and removal options that considers floodplain and
14 wetland restoration, water quality, aquatic organism passage, public recreation
15 opportunities, and costs shall be completed, pursuant to the rule adopted by the
16 Department.

17 (F) Under this subdivision (b)(2), only engineering, analysis, design,
18 and construction that result in removal of a dam are eligible for loan subsidy.

19 (c) The Fund created by this section shall be established and held separate
20 and apart from any other funds or monies of the State and shall be used and
21 administered exclusively for the purposes set forth in this section. The funds

1 shall be invested in the same manner as permitted for investment of funds
2 belonging to the State or held in the Treasury. The Fund shall consist of the
3 following:

4 (1) ~~Such~~ such sums as may be appropriated or transferred thereto from
5 time to time by the General Assembly, the Emergency Board, or the Joint
6 Fiscal Committee during such times as the General Assembly is not in
7 session.;

8 (2) ~~Principal~~ principal and interest received from the repayment of loans
9 made from the Fund.;

10 (3) ~~Capitalization~~ capitalization grants and awards made to the State by
11 the United States of America for the purposes for which the Fund has been
12 established.;

13 (4) ~~Interest~~ interest earned from the investment of Fund balances.;

14 (5) ~~Private~~ private gifts, bequests, and donations made to the State for
15 the purposes for which the Fund has been established.;

16 (6) ~~Other~~ other funds from any public or private source intended for use
17 for any of the purposes for which the Fund has been established.

18 ~~(e)~~(d) The Secretary may bring an action under this subsection or other
19 available State and federal laws against the owner of the dam to seek
20 reimbursement to the Fund for all loans made from the Fund pursuant to this
21 section.

1 (e)(1) Annually, on or before January 31, the Department shall report to the
2 House Committee on Environment and Energy and the Senate Committee on
3 Natural Resources and Energy regarding operation and administration of the
4 Dam Safety Program. The report shall include:

5 (A) details on all emergency and nonemergency loans made from the
6 Dam Safety Fund during the previous year,

7 (B) a description of each project funded from the Dam Safety Fund,
8 including dam name, town and waterbody in which the dam is located, hazard
9 classification, dam condition, details of the repair or removal, year of the last
10 and next Department inspection, project cost, loan amount, and repayment
11 terms;

12 (C) for emergency loans, justification for the emergency and an
13 explanation why action was needed to be undertaken immediately using State
14 funds; and

15 (D) the status of all loan repayments, including all outstanding loans,
16 dam and project name, the party responsible for repayment, terms of the loans,
17 status of repayment, and whether all or part of the loan was forgiven or
18 subsidized.

19 (2) The Department shall post reports made under this subsection to its
20 website in the same date the report is submitted to the General Assembly.

21 § 1107. HAZARD POTENTIAL CLASSIFICATIONS

1 (a) The ~~State agency having jurisdiction over a nonfederal dam listed in the~~
2 ~~Vermont Dam Inventory~~ Department shall assess the hazard potential
3 classification of ~~the dam~~ all nonfederal dams listed in the Vermont Dam
4 Inventory based on the potential loss of human life, property damage, and
5 economic loss that would occur in the event of the failure of the dam. There
6 shall be four hazard potential classifications: high, significant, low, and
7 minimal.

8 (b) The ~~State agency having jurisdiction over a nonfederal dam on the~~
9 ~~Vermont Dam Inventory~~ Department may assess or reassess the hazard
10 potential classification of the dam at any time.

11 * * *

12 § 1110. RULEMAKING

13 The Commissioner of Environmental Conservation shall adopt rules to
14 implement the requirements of this chapter for dams under the jurisdiction of
15 the Department. The rules shall include:

16 (1) a standard or regulatory threshold under which a dam is exempt from
17 the registration or inspection requirements of this chapter;

18 (2) standards for:

19 (A) the siting, design, construction, reconstruction, enlargement,
20 modification, or alteration of a dam;

21 (B) operation and maintenance of a dam;

- 1 (C) inspection, monitoring, record keeping, and reporting;
- 2 (D) repair, breach, or removal of a dam;
- 3 (E) application for authorization under section 1082 of this title; and
- 4 (F) the development of an emergency action plan for a dam,
- 5 including guidance on how to develop an emergency action plan, the content of
- 6 a plan, and when and how an emergency action plan should be updated;
- 7 (3) criteria for the hazard potential classification of dams in the State;
- 8 (4) a process by which a person owning legal title to a dam or a person
- 9 owning the land on which the dam is located shall register a dam and record
- 10 the existence of the dam in the lands records; ~~and~~
- 11 (5) requirements for the person owning legal title to a dam or the person
- 12 owning the land on which the dam is located to conduct inspections of the
- 13 dam;
- 14 (6) requirements for access to financing and subsidy from the Dam
- 15 Safety Revolving Loan Fund; and
- 16 (7) requirements and criteria for an alternative analysis, including that it
- 17 be conducted by an independent third party and is necessary for eligibility for
- 18 nonemergency funding from the Unsafe Dam Fund.

19 § 1111. ~~NATURAL RESOURCES ATLAS; DAM STATUS~~

20 ~~Annually on or before January 1, the Public Utility Commission shall~~

21 ~~submit to the Department updated inventory information from the previous~~

1 ~~calendar year for dams under the jurisdiction of the Public Utility Commission.~~

2 [Repealed.]

3 * * * Basin Planning * * *

4 Sec. 11. 10 V.S.A. § 1253(d) is amended to read:

5 (d)(1) Through the process of basin planning, the Secretary shall determine
6 what degree of water quality and classification should be obtained and
7 maintained for those waters not classified by the Board before 1981 following
8 the procedures in sections 1254 and 1258 of this title. Those waters shall be
9 classified in the public interest. The Secretary shall prepare and maintain an
10 overall surface water management plan to assure that the State water quality
11 standards are met in all State waters. The surface water management plan shall
12 include a schedule for updating the basin plans. The Secretary, in consultation
13 with regional planning commissions and the Natural Resources Conservation
14 Council, shall revise all 15 basin plans and update the basin plans on a five-
15 year rotating basis. On or before January 15 of each year, the Secretary shall
16 report to the House Committees on Agriculture, Food Resiliency, and Forestry
17 and on ~~Natural Resources, Fish, and Wildlife~~ Environment and Energy and to
18 the Senate Committees on Agriculture and on Natural Resources and Energy
19 regarding the progress made and difficulties encountered in revising basin
20 plans. The report shall include a summary of basin planning activities in the
21 previous calendar year, a schedule for the production of basin plans in the

1 subsequent calendar year, and a summary of actions to be taken over the
2 subsequent three years. The provisions of 2 V.S.A. § 20(d) (expiration of
3 required reports) shall not apply to the report to be made under this subsection.

4 (2) In developing a basin plan under this subsection, the Secretary shall:

5 (A) identify waters that should be reclassified outstanding resource
6 waters or that should have one or more uses reclassified under section 1252 of
7 this title;

8 (B) identify wetlands that should be reclassified as Class I wetlands;

9 (C) identify projects or activities within a basin that will result in the
10 protection and enhancement of water quality;

11 (D) review the evaluations performed by the Secretary under
12 subdivisions 922(a)(1) and (2) of this title and update those findings based on
13 any new data collected as part of a basin plan;

14 (E) for projects in the basin that will result in enhancement of
15 resources, including those that protect high quality waters of significant natural
16 resources, the Secretary shall identify the funding needs beyond those currently
17 funded by the Clean Water Fund;

18 (F) ensure that municipal officials, citizens, natural resources
19 conservation districts, regional planning commissions, watershed groups, and
20 other interested groups and individuals are involved in the basin planning
21 process;

1 (G) ensure regional and local input in State water quality policy
2 development and planning processes;

3 (H) provide education to municipal officials and citizens regarding
4 the basin planning process;

5 (I) develop, in consultation with the regional planning commission,
6 an analysis and formal recommendation on conformance with the goals and
7 objectives of applicable regional plans;

8 (J) provide for public notice of a draft basin plan; ~~and~~

9 (K) provide for the opportunity of public comment on a draft basin
10 plan; and

11 (L) identify opportunities to mitigate impacts of severe precipitation
12 events on communities through implementation of nature-based restoration
13 projects or practices that increase natural flood water attenuation and storage.

14 **Sec. 12. DAM SAFETY DIVISION POSITIONS**

15 In addition to other funds appropriated to the Agency of Natural Resources
16 in fiscal year 2025, \$350,000.00 is appropriated to the Agency for the purposes
17 of funding three new permanent full-time classified positions in the Dam
18 Safety Division of the Department of Environmental Conservation.

19 * * * Effective Date * * *

20 **Sec. 13. EFFECTIVE DATE**

21 This act shall take effect on July 1, 2024.

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(Committee vote: _____)

Senator _____

FOR THE COMMITTEE