

Journal of the Senate

WEDNESDAY, MARCH 20, 2024

The Senate was called to order by the President.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Message from the House No. 32

A message was received from the House of Representatives by Ms. Courtney Reckord, its Second Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

The House has passed House bills of the following titles:

H. 856. An act relating to medical leave for a serious injury.

H. 870. An act relating to professions and occupations regulated by the Office of Professional Regulation.

In the passage of which the concurrence of the Senate is requested.

The House has considered a bill originating in the Senate of the following title:

S. 18. An act relating to banning flavored tobacco products and e-liquids.

And has passed the same in concurrence with proposal of amendment in the adoption of which the concurrence of the Senate is requested.

Bill Referred to Committee on Finance

S. 167.

Senate bill of the following title, appearing on the Calendar for notice, and affecting the revenue of the state, under the rule was referred to the Committee on Finance:

An act relating to miscellaneous amendments to education law.

Bills Referred

House bills of the following titles were severally read the first time and referred:

H. 856.

An act relating to medical leave for a serious injury.

To the Committee on Economic Development, Housing and General Affairs.

H. 870.

An act relating to professions and occupations regulated by the Office of Professional Regulation.

To the Committee on Government Operations.

Bill Amended; Third Reading Ordered**S. 150.**

Senator Sears, for the Committee on Judiciary, to which was referred Senate bill entitled:

An act relating to automobile insurance.

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 23 V.S.A. § 941 is amended to read:

§ 941. INSURANCE AGAINST UNINSURED, UNDERINSURED, OR UNKNOWN MOTORIST

* * *

(f) For the purpose of this subchapter, a motor vehicle is underinsured to the extent that:

(1) the liability insurance limits applicable at the time of the crash are less than the ~~limits of the uninsured motorist coverage applicable to the insured~~ damages that a person insured pursuant to this section is legally entitled to recover because of injury or death; or

(2) the available liability insurance has been reduced by payments to others injured in the crash to an amount less than the ~~limits of the uninsured motorist coverage applicable to the insured~~ damages that a person insured pursuant to this section is legally entitled to recover because of injury or death.

* * *

(h) Payments made to an injured party under the liability insurance policy of the person legally responsible for the damage or personal injury shall not be deducted from the underinsured motorist coverage otherwise available to the injured party.

Sec. 2. 8 V.S.A. § 4203(4) is amended to read:

(4) Payment of any judicial judgment or claim by the insured for any of the company's liability under the policy shall not bar the insured from any action or right of action against the company. In case of payment of loss or expense under the policy, the company shall be subrogated to all rights of the insured against any party, as respects such loss or expense, to the amount of such payment, and the insured shall execute all papers required and shall cooperate with the company to secure to the company such rights. However, the right of subrogation against any third party shall not exist or be claimed in favor of the insurer who has paid or reimbursed, to or for the benefit of the insured, medical costs payable pursuant to medical payments coverage.

Sec. 3. EFFECTIVE DATE; APPLICATION

This act shall take effect on passage and shall apply to all automobile insurance policies offered, issued, or renewed on or after January 1, 2025.

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, the recommendation of amendment was agreed to, and third reading of the bill was ordered.

Bill Amended; Third Reading Ordered

S. 183.

Senator Clarkson, for the Committee on Government Operations, to which was referred Senate bill entitled:

An act relating to planning for the Agency of Health Care Administration.

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. REENVISIONING THE AGENCY OF HUMAN SERVICES;
REPORT

(a) The Secretary of Human Services, in collaboration with the Deputy Secretary of Human Services and the commissioner of each department within the Agency of Human Services and in consultation with the Office of the Health Care Advocate; the Office of the Child, Youth, and Family Advocate; Disability Rights Vermont; the Office of the Long-Term Care Ombudsman; and other relevant stakeholders, shall consider options for reenvisioning the Agency of Human Services, such as restructuring the existing Agency of Human Services or dividing the existing Agency of Human Services into two or more separate agencies.

(b) The Secretary of Human Services and the other stakeholders identified in subsection (a) of this section shall evaluate the current structure of the Agency of Human Services, identify potential options for reenvisioning the Agency and engage in a cost-benefit analysis of each option, and develop one or more recommendations for implementation.

(c) On or before February 1, 2025, the Secretary shall provide the recommendations developed by the Secretary and stakeholders to the House Committees on Government Operations and Military Affairs, on Health Care, and on Human Services and the Senate Committees on Government Operations and on Health and Welfare, including the following:

(1) the rationale for selecting the recommended option or options;

(2) the likely impact of the recommendations on the departments within the Agency and on the Vermonters served by those departments, including Vermonters who are members of historically marginalized communities;

(3) how the recommendations would center the needs of and lead to better outcomes for the individuals and families served by the Agency and its departments and make the Agency more accountable to the Vermonters whom it serves;

(4) how the recommendations could improve collaboration, integration, and alignment of the services currently provided by the Agency and its departments and how they could enhance coordination and communication among the departments;

(5) how the recommendations could address the workforce and personnel capacity challenges that the Agency and its departments encounter;

(6) how the recommendations could address the technology and facility challenges that the Agency and its departments encounter;

(7) a transition and implementation plan for the recommendations that is designed to minimize confusion and disruption for individuals and families served by the Agency and its departments, as well as for Agency and departmental staff;

(8) a proposed organizational chart for any recommended reconfigurations; and

(9) the estimated costs or savings associated with the recommendations.

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

and that after passage the title of the bill be amended to read: “An act relating to reenvisioning the Agency of Human Services”

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, the recommendation of amendment was agreed to, and third reading of the bill was ordered.

Bills Passed

Senate bills of the following titles were severally read the third time and passed:

S. 55. An act relating to authorizing public bodies to meet electronically under Vermont’s Open Meeting Law.

S. 186. An act relating to the systemic evaluation of recovery residences and recovery communities.

Bill Amended; Bill Passed

S. 284.

Senate bill entitled:

An act relating to the use of electronic devices and digital and online products in schools.

Was taken up.

Thereupon, pending third reading of the bill, Senators Watson, Campion, Chittenden, Gulick, Hashim, Vyhovsky, Weeks and Williams moved to amend the bill as follows:

First: In Sec. 1, cell phone use in schools; model policy, by striking out subdivision (b)(1) in its entirety, and inserting in lieu thereof a new subdivision (b)(1) to read as follows:

(1) information on how many school districts have adopted cell phone or personal electronic device use policies, whether and how those policies differ from the Agency’s model policy and guidance, and qualitative information regarding the effectiveness of those policies, including:

(A) information regarding student compliance;

(B) information regarding whether such polices are being enforced, including information on the effort required on the part of educators to ensure student compliance; and

(C) information regarding parent, student, and educator satisfaction with such policies;

Second: In Sec. 1, cell phone use in schools; model policy, by striking out subdivision (b)(3) in its entirety, and inserting in lieu thereof a new subdivision (b)(3) to read as follows:

(3) in consultation with the Vermont Department of Health, recommendations for:

(A) further legislative action regarding cell phone or personal electronic device use in schools; and

(B) age-appropriate educational opportunities regarding media literacy and the safe and appropriate use of cell phones or personal electronic devices.

Thereupon, Senator Kitchel, moved that the amendment offered by Senators Watson, Campion, Chittenden, Gulick, Hashim, Vyhovsky, Weeks, and Williams be amended in the Second instance of amendment, Sec 1., subdivision (b)(3), after “in consultation with the” by inserting the words Department of Mental Health and the, and by striking out the word “Vermont”

Which was agreed to

Thereupon, the pending question, Shall the bill be amended as recommended by Senators Watson, Campion, Chittenden, Gulick, Hashim, Vyhovsky, Weeks and Williams, as amended?, was agreed to,

Thereupon, the bill was read the third time and passed.

Bill Passed

S. 289.

Senate bill of the following title was read the third time and passed:

An act relating to age-appropriate design code.

The President *pro tempore* Assumes the Chair

Bill Amended; Third Reading Ordered

S. 305.

Senate committee bill entitled:

An act relating to miscellaneous changes related to the Public Utility Commission.

Having appeared on the Calendar for notice for one day, was taken up.

Senator Bray, for the Committee on Natural Resources, to which the bill was referred, reported that the bill be amended as follows:

By striking out Sec. 7, effective date, in its entirety and inserting in lieu thereof the following:

* * * Energy Efficiency Modernization Act * * *

Sec. 7. 2020 Acts and Resolves No. 151, Sec. 1, as amended by 2023 Acts and Resolves No. 44, Sec. 1, is further amended to read:

Sec. 1. ALLOWANCE OF THE USE OF ENERGY EFFICIENCY
CHARGE FUNDS FOR GREENHOUSE GAS EMISSIONS
REDUCTION PROGRAMS

(a) The electric resource acquisition budget for an entity appointed to provide electric energy efficiency and conservation programs and measures pursuant to 30 V.S.A. § 209(d)(2)(A) for the calendar years 2021–2026 shall be determined pursuant to 30 V.S.A. § 209(d)(3)(B). This section shall apply only if the entity’s total electric resource acquisition budget for 2024–2026 does not exceed the entity’s total electric resource acquisition budget for 2021–2023, adjusted for cumulative inflation between January 1, 2021, and July 1, 2023, using the national consumer price index. An entity may include proposals for activities allowed under this pilot in its 2027–2029 demand resource plan filing, but these activities shall only be implemented if this section is extended to cover that ~~timeframe~~ time frame.

(b) Notwithstanding any provision of law or order of the Public Utility Commission (PUC) to the contrary, ~~the PUC shall authorize an entity pursuant to subsection (a) of this section to appointed under 30 V.S.A. § 209(d)(2)(A) may spend a portion of its electric resource acquisition budget, in an amount to be determined by the PUC but not to exceed \$2,000,000.00 per year, on programs, measures, and services that reduce greenhouse gas emissions in the thermal energy or transportation sectors. Programs measures, and services authorized pursuant to subsection (a) of this section shall~~ An entity spending a portion of its electric resource acquisition budget as outlined in this section shall submit notice of the amount of the annual electric resource acquisition budget to be spent pursuant to this subsection to the PUC, the Department of Public Service, the electric distribution utilities, and the Vermont Public Power Supply Authority with a sworn statement attesting that the programs, measures, or services comply with the following criteria:

(1) Reduce greenhouse gas emissions in the thermal energy or transportation sectors, or both.

(2) Have a nexus with electricity usage.

(3) Be additive and complementary to and shall not replace or be in competition with electric utility energy transformation projects pursuant to 30 V.S.A. § 8005(a)(3) and existing thermal efficiency programs operated by

an entity appointed under 30 V.S.A. § 209(d)(2)(A) such that they result in the largest possible greenhouse gas emissions reductions in a cost-effective manner.

(4) Be proposed after the entity consults with any relevant State agency or department and shall not be duplicative or in competition with programs delivered by that agency or department.

(5) Be delivered on a statewide basis. However, this shall not preclude the delivery of services specific to a retail electricity provider. Should such services be offered, all distribution utilities and Vermont Public Power Supply Authority shall be provided the opportunity to participate, and those services shall be designed and coordinated in partnership with each of them. For programs and services that are not offered on a statewide basis, the proportion of utility-specific program funds used for services to any distribution utility shall be ~~no~~ not less than the proportionate share of the energy efficiency charge, which in the case of Vermont Public Power Supply Authority, is the amount collected across their combined member utility territories during the period this section remains in effect.

(c) An entity that ~~is approved to provide~~ provides a program, measure, or service pursuant to this section shall provide the program, measure, or service in cooperation with a retail electricity provider.

~~(4) The entity shall not claim any savings and reductions in fossil fuel consumption and in greenhouse gas emissions by the customers of the retail electricity provider resulting from the program, measure, or service if the provider elects to offer the program, measure, or service pursuant to 30 V.S.A. § 8005(a)(3) unless the entity and provider agree upon how savings and reductions should be accounted for, apportioned, and claimed.~~

~~(2) The PUC shall develop standards and methods to appropriately measure the effectiveness of the programs, measures, and services in relation to the entity's Demand Resources Plan proceeding.~~

(d) Any funds spent on programs, measures, and services pursuant to this section shall not be counted towards the calculation of funds used by a retail electricity provider for energy transformation projects pursuant to 30 V.S.A. § 8005(a)(3) and the calculation of project costs pursuant to 30 V.S.A. § 8005(a)(3)(C)(iv).

~~(e) On or before April 30, 2021 and every April 30 for six years thereafter, the PUC shall submit a written report to the House Committee on Environment and Energy and the Senate Committees on Natural Resources and Energy and on Finance concerning any programs, measures, and services approved pursuant to this section.~~

(⊕) Thermal energy and process fuel efficiency funding. Notwithstanding 30 V.S.A. § 209(e), a retail electricity provider that is also an entity appointed under 30 V.S.A. § 209(d)(2)(A), may during the years of 2024–2026, use monies subject to 30 V.S.A. § 209(e) to deliver thermal and transportation measures or programs that reduce fossil fuel use regardless of the preexisting fuel source of the customer, including measures or programs permissible under this pilot program, with special emphasis on measures or programs that take a new or innovative approach to reducing fossil fuel use, including modifying or supplementing existing vehicle incentive programs and electric vehicle supply equipment grant programs to incentivize high-consumption fuel users, especially individuals using more than 1000 gallons of gasoline or diesel annually and those with low and moderate income, to transition to the use of battery electric vehicles.

* * * Clean Heat Standard * * *

Sec. 8. 30 V.S.A. § 8124 is amended to read:

§ 8124. CLEAN HEAT STANDARD COMPLIANCE

* * *

(b) Annual registration.

* * *

(4) The Commission shall maintain, and update annually, a list of registered entities on its website ~~that contains the required registration information.~~

* * *

Sec. 9. 30 V.S.A. § 8125 is amended to read:

§ 8125. DEFAULT DELIVERY AGENT

* * *

(b) Appointment. The default delivery agent shall be one or more statewide entities capable of providing a variety of clean heat measures. ~~The Commission shall designate the first default delivery agent on or before June 1, 2024.~~ The designation of an entity under this subsection may be by order of appointment or contract. A designation, whether by order of appointment or by contract, may only be issued after notice and opportunity for hearing. An existing order of appointment issued by the Commission under section 209 of this title may be amended to include the responsibilities of the default delivery agent. An order of appointment shall be for a limited duration not to exceed 12 years, although an entity may be reappointed by order or contract. An order of appointment may include any conditions and requirements that the

Commission deems appropriate to promote the public good. For good cause, after notice and opportunity for hearing, the Commission may amend or revoke an order of appointment.

* * *

(d) Use of default delivery agent.

* * *

(3) The Commission shall by rule or order establish a standard timeline under which the default delivery agent credit cost or costs are established and by which an obligated party must file its form. The default delivery agent's schedule of costs shall include sufficient costs to deliver installed measures and shall specify separately the costs to deliver measures to customers with low income and customers with moderate income as required by subsection 8124(d) of this title. The Commission shall provide not less than ~~120~~ 90 days' notice of default delivery agent credit cost or costs prior to the deadline for an obligated party to file its election form so an obligated party can assess options and inform the Commission of its intent to procure credits in whole or in part as fulfillment of its requirement.

* * *

(e) Budget.

* * *

(B) the development of a three-year plan and associated proposed budget by the default delivery agent to be informed by the final results of the Department's potential study. The default delivery agent may propose a portion of its budget towards promotion and market uplift, workforce development, and trainings for clean heat measures. The Commission shall approve the first three-year plan and associated budget by no later than September 1, 2025; and

* * *

Sec. 10. 30 V.S.A. § 8126 is amended to read:

§ 8126. RULEMAKING

(a) The Commission shall adopt rules and may issue orders to implement and enforce the Clean Heat Standard program.

* * *

(c) The Commission's rules may include a provision that allows the Commission to revise its Clean Heat Standard rules by order of the

Commission without the revisions being subject to the rulemaking requirements of the 3 V.S.A. chapter 25, provided the Commission:

- (1) provides notice of any proposed changes;
- (2) allows for a 30-day comment period;
- (3) responds to all comments received on the proposed change;
- (4) provides a notice of language assistance services on all public outreach materials; and
- (5) arranges for language assistance to be provided to members of the public as requested using professional language services companies.

(d) Any order issued under ~~this chapter~~ subsection (c) of this section shall be subject to appeal to the Vermont Supreme Court under section 12 of this title, and the Commission must immediately file any orders, a redline, and clean version of the revised rules with the Secretary of State, with notice simultaneously provided to the House Committee on Environment and Energy and the Senate Committees on Finance and on Natural Resources and Energy.

Sec. 11. 2023 Acts and Resolves No. 18, Sec. 6 is amended to read:

Sec. 6. PUBLIC UTILITY COMMISSION IMPLEMENTATION

* * *

(f) Final rules.

* * *

(5) The final proposed rules shall contain the first set of annual required amounts for obligated parties as described in 30 V.S.A. § 8124(a)~~(1)~~(2). The first set of annual required amounts shall only be adopted through the rulemaking process established in this section, not through an order.

* * *

Sec. 12. 32 V.S.A. § 3102 is amended to read:

§ 3102. CONFIDENTIALITY OF TAX RECORDS

* * *

(d) The Commissioner shall disclose a return or return information:

* * *

(7) to the Joint Fiscal Office pursuant to subsection 10503(e) of this title and subject to the conditions and limitations specified in that subsection; ~~and~~

(8) to the Attorney General; the Data Clearinghouse established in the October 2017 Non-Participating Manufacturer Adjustment Settlement Agreement, which the State of Vermont joined in 2018; the National Association of Attorneys General; and counsel for the parties to the Agreement as required by the Agreement and to the extent necessary to comply with the Agreement and only as long as the State is a party to the Agreement; and

(9) to the Public Utility Commission and the Department of Public Service, provided the disclosure relates to the sale of heating fuel into or in the State for compliance with the Clean Heat Standard established in 30 V.S.A. chapter 94.

* * *

* * * Effective Date * * *

Sec. 13. EFFECTIVE DATE

This act shall take effect on passage.

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and the recommendation of amendment of the Committee on Natural Resources was agreed to on a division of the Senate, Yeas 20, Nays 7.

Thereupon, third reading of the bill was ordered.

Third Reading Ordered

S. 246.

Senator Clarkson, for the Committee on Economic Development, Housing and General Affairs, to which was referred Senate bill entitled:

An act relating to amending the Vermont basic needs budget and livable wage.

Reported that the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and third reading of the bill was ordered.

Third Reading Ordered

H. 801.

Senator Watson, for the Committee on Government Operations, to which was referred House bill entitled:

An act relating to approval of the adoption of the charter of the Town of Waterbury.

Reported that the bill ought to pass in concurrence.

Senator Cummings, for the Committee on Finance, to which the bill was referred, reported that the bill ought to pass in concurrence.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and third reading of the bill was ordered.

The President Resumes the Chair

Bill Amended; Third Reading Ordered

S. 213.

Senator Bray, for the Committee on Natural Resources and Energy, to which was referred Senate bill entitled:

An act relating to the regulation of wetlands, river corridor development, and dam safety.

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

* * * Short Title * * *

Sec. 1. SHORT TITLE

This act may be cited as the “Flood Safety Act.”

* * * Development in River Corridors * * *

Sec. 2. FINDINGS

The General Assembly finds that for purposes of Secs. 3–11 of this act:

(1) According to the 2023 National Climate Assessment, the northeastern region of the United States has experienced a 60 percent increase in more extreme precipitation events since 1958, particularly in inland flooding of valleys, where persons, infrastructure, and agriculture tend to be concentrated.

(2) The 2021 Vermont Climate Assessment highlights that Vermont has seen:

(A) a 21 percent increase in average annual precipitation since 1990;
and

(B) 2.4 additional days of heavy precipitation since the 1960s.

(3) According to the National Oceanic and Atmospheric Administration’s National Centers for Environmental Information, average annual damages from flooding and flood-related disasters between 1980 and 2023 exceeds 30 million, conservatively.

(4) According to the Department of Environmental Conservation, 70 to 80 percent of all flood-related damages occur within Vermont's river corridors.

(5) According to the Department of Environmental Conservation, only 10 percent of Vermont municipalities, cities, or incorporated villages have adopted full river corridor protections through the Department's model bylaws.

(6) Promoting existing compact settlements, located along Vermont waterways, will require improved flood resilience efforts, as described in the initial Vermont Climate Action Plan of 2021, such as managing flood and fluvial erosion hazards to protect Vermont's compact settlements, which will be a critical component of a successful climate adaptation response.

(7) The State, as recommended in the initial Vermont Climate Action Plan of 2021, should adopt legislation that would authorize the Agency of Natural Resources to revise the Vermont Flood Hazard Area and River Corridor rule to provide the Agency with delegable, statewide jurisdiction and permitting authority for new development taking place in mapped river corridors.

Sec. 3. DEPARTMENT OF ENVIRONMENTAL CONSERVATION;
RIVER CORRIDOR BASE MAP; INFILL MAPPING;
EDUCATION AND OUTREACH

(a) On or before January 1, 2026, the Department of Environmental Conservation shall amend by procedure the statewide River Corridor Base Map to identify areas suitable for development that are located within existing settlements and that will not cause or contribute to increases in fluvial erosion hazards.

(b) Beginning on January 1, 2025 and ending on January 1, 2027, the Department of Environmental Conservation shall conduct an education and outreach program to consult with and collect input from municipalities, environmental justice focus populations, the Environmental Justice Advisory Council, businesses, property owners, farmers, and other members of the public regarding how State permitting of development in mapped river corridors will be implemented, including potential restrictions on the use of land within mapped river corridors. The Department shall develop educational materials for the public as part of its charge under this section. The Department shall collect input from the public regarding the permitting of development in mapped river corridors as proposed by this act. On or before January 15, 2027 and until permitting of development in mapped river corridors begins under 10 V.S.A. §754, the Department shall submit to the Senate Committee on Natural Resources and Energy, the House Committee on

Environment and Energy, and the Environmental Justice Advisory Council a report that shall include:

(1) a summary of the public input it received regarding State permitting of development in mapped river corridors during the public education and outreach required under this section;

(2) recommendations, based on the public input collected, for changes to the requirements for State permitting of development in mapped river corridors;

(3) an analysis and summary of State permitting of development in mapped river corridors on environmental justice populations; and

(4) a summary of the Department's progress in adopting the rules required under 10 V.S.A. § 754 for the regulation of development in mapped river corridors.

(c) In addition to other funds appropriated to the Agency of Natural Resources in fiscal year 2025:

(1) the amount of \$900,000.00 shall be appropriated from the General Fund for six new, full-time positions to conduct infill and redevelopment mapping of mapped river corridors under subsection (a) of this section, to conduct the education and outreach required under subsection (b) of this section, and to conduct the rulemaking and permitting required under Sec. 5 of this act; and

(2) the amount of \$225,000.00 is appropriated from the General Fund for the purpose of contracting costs necessary to implement the mapping, education and outreach, rulemaking, and permitting required under this section and Sec. 5 of this act.

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

§ 752. DEFINITIONS

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

* * *

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

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

* * *

(8) "~~Uses~~ Development exempt from municipal regulation" means ~~land~~

~~use or activities that are~~ development that is exempt from municipal land use regulation under 24 V.S.A. chapter 117.

* * *

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

(14) “Mapped river corridor” means a river corridor drawn and adopted by the Secretary of Natural Resources as part of the statewide River Corridor Base Map Layer in accordance with the Flood Hazard Area and River Corridor Protection Procedure for rivers and streams with a watershed area greater than two square miles.

Sec. 5. 10 V.S.A. § 754 is amended to read:

§ 754. ~~FLOOD HAZARD AREA RULES ; USES EXEMPT FROM MUNICIPAL REGULATION~~ MAPPED RIVER CORRIDOR RULES

(a) Rulemaking authority.

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

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

~~(ii) State-owned and -operated institutions and facilities that are located within a flood hazard area or river corridor~~ On or before July 1, 2027, the Secretary shall adopt rules pursuant to 3 V.S.A. chapter 25 that establish requirements for issuing and enforcing permits for:

(A) all development within a mapped river corridor in the State; and

(B) for development exempt from municipal regulation in flood hazard areas.

* * *

(b) Required rulemaking content. The rules shall:

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

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

(3) establish requirements for the permitting of development within the mapped river corridors of the State;

(4) provide certain regulatory exemptions for minor development activities in a mapped reiver corridor when the development activities have no adverse environmental effects;

(5) establish the requirements and process for a municipality to be delegated the State's permitting authority for development in a mapped river corridor when the development is not exempt from municipal regulation and when the municipality has adopted an ordinance or bylaw under 24 V.S.A. chapter 117 that has been approved by the Secretary and that meets or exceeds the requirements established under State rule;

(6) set forth a process for amending the statewide River Corridor Base Map; and

~~(e)(7) Discretionary rulemaking.~~ The rules required under this section may establish requirements that exceed the requirements of the National Flood Insurance Program for uses development exempt from municipal regulation in flood hazard areas, including requirements for the maintenance of existing native riparian vegetation, provided that any rules adopted under this subsection that exceed the minimum requirements of the National Flood Insurance Program shall be designed to prevent or limit a risk of harm to life, property, or infrastructure from flooding.

~~(d)(c) General permit.~~ The rules authorized by this section may establish requirements for a general permit to implement the requirements of this section, including authorization under the general permit to conduct a specified use exempt from municipal regulation without notifying or reporting to the Secretary or an agency delegated under subsection ~~(g)(f)~~ of this section. A general permit implementing the requirements of this section shall not be required to be issued by rule.

~~(e)(d) Consultation with interested parties.~~ Prior to submitting the rules required by this section to the Secretary of State under 3 V.S.A. § 838, the Secretary shall solicit the recommendations of and consult with affected and interested persons and entities such as: the Secretary of Commerce and Community Development; the Secretary of Agriculture, Food and Markets; the Secretary of Transportation; the Commissioner of Financial Regulation; representatives of river protection interests; representatives of fishing and recreational interests; representatives of the banking industry; representatives of the agricultural community; representatives of the forest products industry; the regional planning commissions; municipal interests; and representatives of municipal associations.

~~(f)~~(e) Permit requirement. A Beginning on January 1, 2028, a person shall not commence or conduct a use development exempt from municipal regulation in a flood hazard area or commence or conduct any development in a mapped river corridor in a municipality that has adopted a flood hazard area bylaw or ordinance under 24 V.S.A. chapter 117 or commence construction of a ~~State-owned and operated institution or facility located within a flood hazard area or river corridor~~, without a permit issued under the rules required under subsection (a) of this section by the Secretary or by a State agency delegated permitting authority under subsection ~~(g)~~(f) of this section. When an application is filed under this section, the Secretary or delegated State agency shall proceed in accordance with chapter 170 of this title.

~~(g)~~(f) Delegation.

(1) The Secretary may delegate to another State agency the authority to implement the rules adopted under this section, to issue a permit under subsection ~~(f)~~(e) of this section, and to enforce the rules and a permit.

(2) A memorandum of understanding shall be entered into between the Secretary and a delegated State agency for the purpose of specifying implementation of requirements of this section and the rules adopted under this section, issuance of a permit or coverage under a general permit under this section, and enforcement of the rules and permit required by this section.

(3) Prior to entering a memorandum of understanding, the Secretary shall post the proposed memorandum of understanding on its website for 30 days for notice and comment. When the memorandum of understanding is posted, it shall include a summary of the proposed memorandum; the name, telephone number, and address of a person able to answer questions and receive comments on the proposal; and the deadline for receiving comments. A final copy of a memorandum of understanding entered into under this section shall be sent to the chairs of the ~~House Committees on Energy and Technology and on Natural Resources, Fish, and Wildlife~~ Committee on Environment and Energy, the Senate Committee on Natural Resources and Energy, and any other committee that has jurisdiction over an agency that is a party to the memorandum of understanding.

~~(h)~~(g) Municipal authority. This section and the rules adopted under it shall not prevent a municipality from adopting substantive requirements for development in a flood hazard area bylaw or ordinance under 24 V.S.A. chapter 117 that are more stringent than the rules required by this section, provided that the bylaw or ordinance shall not apply to uses exempt from municipal regulation.

Sec. 6. 10 V.S.A. § 755 is amended to read:

§ 755. STATE FLOOD HAZARD AREA STANDARDS; MUNICIPAL EDUCATION; MODEL FLOOD HAZARD AREA BYLAW OR ORDINANCE

(a) State flood hazard area standards.

(1) On or before January 1, 2026, the Secretary shall adopt rules pursuant to 3 V.S.A. chapter 25 that establish a set of flood hazard area standards for enrollment in the National Flood Insurance Program (NFIP).

(2) The rules shall contain flood hazard area standards that meet or exceed the minimum standards of the NFIP by reducing flood risk to new development and ensuring new development does not create adverse impacts to adjacent preexisting development.

(3) Any municipality with a municipal flood hazard area bylaw or ordinance shall update their bylaw or ordinance to incorporate the State Flood Hazard Area Standards. Nothing in this section shall prohibit a municipality from adopting a more protective flood hazard standard with language and standards approved by the Agency.

(4) On or after January 1, 2028, the State Flood Hazard Areas adopted under subdivision (1) of this subsection shall be the State minimum flood hazard areas standards.

(b) Education and assistance. The Secretary, in consultation with regional planning commissions, shall provide ongoing education, technical assistance, and guidance to municipalities regarding the requirements under 24 V.S.A. chapter 117 necessary for compliance with the National Flood Insurance Program (NFIP), including implementation of the State Flood Hazard Area Standards adopted under subsection (a) of this section.

(b)(c) Model flood hazard area bylaw or ordinance. The Secretary shall create and make available to municipalities a model flood hazard area bylaw or ordinance for potential adoption by municipalities pursuant to 24 V.S.A. chapter 117 or 24 V.S.A. § 2291. The model bylaw or ordinance shall set forth the minimum provisions necessary to meet the requirements of the National Flood Insurance Program NFIP, including implementation of the State Flood Hazard Area Standards adopted under subsection (a) of this section. The model bylaw may include alternatives that exceed the minimum requirements for compliance with the National Flood Insurance Program NFIP and State Flood Hazard Area Standards in order to allow a municipality to elect whether it wants to adopt the minimum requirement or an alternate requirement that further minimizes the risk of harm to life, property, and infrastructure from flooding.

(e)(d) Assistance to municipalities with no flood hazard area bylaw or

ordinance. The Secretary, in consultation with municipalities, municipal organizations, and regional planning commissions, shall provide education and technical assistance to municipalities that lack a flood hazard area bylaw or ordinance in order to encourage adoption of a flood hazard area bylaw or ordinance that qualifies the municipality for the ~~National Flood Insurance Program (NFIP)~~.

Sec. 7. 24 V.S.A. § 4302(c)(14) is amended to read:

(14) To encourage flood resilient communities.

(A) New development in identified flood hazard, fluvial erosion, and river corridor protection areas should be avoided. If new development is to be built in such areas, it should not exacerbate flooding and fluvial erosion and should meet or exceed the statewide minimum flood hazard area standards established by rule by the Agency of Natural Resources.

* * *

Sec. 8. 24 V.S.A. § 4382(a)(12) is amended to read:

(12)(A) A flood resilience plan that:

(i) identifies flood hazard and fluvial erosion hazard areas, based on river corridor maps provided by the Secretary of Natural Resources pursuant to 10 V.S.A. § 1428(a) or maps recommended by the Secretary, and designates those areas to be protected, including floodplains, river corridors, land adjacent to streams, wetlands, and upland forests, to reduce the risk of flood damage to infrastructure and improved property; and

(ii) recommends policies and strategies to protect the areas identified and designated under subdivision (12)(A)(i) of this subsection and to mitigate risks to public safety, critical infrastructure, historic structures, and municipal investments. These strategies shall include adoption and implementation of the State Flood Hazard Area Standards.

(B) A flood resilience plan may reference an existing local hazard mitigation plan approved under 44 C.F.R. § 201.6.

Sec. 9. 24 V.S.A. § 4424 is amended to read:

§ 4424. ~~SHORELANDS; RIVER CORRIDOR PROTECTION AREAS;
FLOOD OR HAZARD AREA; SPECIAL OR FREESTANDING
BYLAWS~~

(a) ~~Bylaws; flood and other hazard areas; river corridor protection.~~ Any municipality may adopt freestanding bylaws under this chapter to address particular hazard areas in conformance with the municipal plan, the State Flood Hazard Area Standards or, for the purpose of adoption of a flood hazard

area bylaw, a local hazard mitigation plan approved under 44 C.F.R. § 201.6. Such freestanding bylaws may include the following, which may also be part of zoning or unified development bylaws:

(1) Bylaws to regulate development and use along shorelands.

(2) Bylaws to regulate development and use in ~~flood areas, river corridor protection areas,~~ flood hazard areas or other hazard areas. The following shall apply if flood hazard or other hazard area bylaws are enacted:

(A) Purposes.

(i) To minimize and prevent the loss of life and property, the disruption of commerce, the impairment of the tax base, and the extraordinary public expenditures and demands on public service that result from flooding, landslides, erosion hazards, earthquakes, and other natural or human-made hazards.

(ii) To ensure that the design and construction of development in ~~flood, river corridor protection,~~ hazard and other hazard areas are accomplished in a manner that minimizes or eliminates the potential for flood and loss or damage to life and property and ensures new development will not adversely affect existing development in a flood hazard area ~~or that minimizes the potential for fluvial erosion and loss or damage to life and property in a river corridor protection area.~~

(iii) To manage all flood hazard areas designated pursuant to 10 V.S.A. § 753.

(iv) To make the State and municipalities eligible for federal flood insurance and other federal disaster recovery and hazard mitigation funds as may be available.

(B) Contents of bylaws. Except as provided in subsection (c) of this section, ~~flood, river corridor protection area,~~ hazard and other hazard area bylaws may shall:

(i) ~~Contain standards and criteria that prohibit the placement of damaging obstructions or structures, the use and storage of hazardous or radioactive materials, and practices that are known to further exacerbate hazardous or unstable natural conditions~~ Require compliance with the State Flood Hazard Area Standards established by rule pursuant to 10 V.S.A. § 755(c) and meet all additional requirements under the National Flood Insurance Program as set forth in 44 C.F.R. § 60.3.

(ii) ~~Require flood, fluvial erosion, and hazard protection through elevation, floodproofing, disaster preparedness, hazard mitigation, relocation, or other techniques.~~

~~(iii) Require adequate provisions for flood drainage and other emergency measures.~~

~~(iv) Require provision of adequate and disaster-resistant water and wastewater facilities.~~

~~(v) Establish other restrictions to promote the sound management and use of designated flood, river corridor protection, and other hazard areas.~~

~~(vi) Regulate~~ Regulate all land development in a flood hazard area, ~~river corridor protection area,~~ or other hazard area, except for development that is regulated under 10 V.S.A. § 754.

(C) Effect on zoning bylaws. Flood hazard or other hazard area bylaws may alter the uses otherwise permitted, prohibited, or conditional in a flood hazard area or other hazard area under a bylaw, as well as the applicability of other provisions of that bylaw. Where a flood hazard bylaw, a hazard area bylaw, or both apply along with any other bylaw, compliance with the flood or other hazard area bylaw shall be prerequisite to the granting of a zoning permit. Where a flood hazard area bylaw or a hazard area bylaw but not a zoning bylaw applies, the flood hazard and other hazard area bylaw shall be administered in the same manner as are zoning bylaws, and a flood hazard area or hazard area permit shall be required for land development covered under the bylaw.

(D) Mandatory provisions.

(i) Except as provided in subsection (c) of this section, all flood hazard and other hazard area bylaws shall provide that no permit for new construction or substantial improvement shall be granted for a flood hazard or other hazard area until after both the following:

(I) ~~A~~ a copy of the application is mailed or delivered by the administrative officer or by the appropriate municipal panel to the Agency of Natural Resources or its designee, which may be done electronically, provided the sender has proof of receipt; and

(II) ~~Either~~ either 30 days have elapsed following the mailing or the Agency or its designee delivers comments on the application.

(ii) The Agency of Natural Resources may delegate to a qualified representative of a municipality with a flood hazard area bylaw or ordinance or to a qualified representative for a regional planning commission the Agency's authority under this subdivision (a)(2)(D) to review and provide technical comments on a proposed permit for new construction or substantial improvement in a flood hazard area. Comments provided by a representative delegated under this subdivision (a)(2)(D) shall not be binding on a

municipality.

(b) Ordinances. A municipality may adopt a flood hazard area, ~~river corridor protection area~~, or other hazard area regulation that meets the requirements of this section by ordinance under subdivision 2291(25) of this title.

* * *

Sec. 10. STUDY COMMITTEE ON STATE ADMINISTRATION OF THE
NATIONAL FLOOD INSURANCE PROGRAM

(a) Creation. There is created the Study Committee on State Administration of the National Flood Insurance Program to review and recommend how to reduce vulnerability to inundation flooding, including how and to what scale to shift responsibility for the administration and enforcement of the National Flood Insurance Program from individual municipalities to the State Department of Environmental Conservation.

(b) Membership. The Study Committee on State Administration of the National Flood Insurance Program shall be composed of the following members:

(1) one current member of the House of Representatives, appointed by the Speaker of the House;

(2) one current member of the Senate, appointed by the Committee on Committees;

(3) two members of the Department of Environmental Conservation Rivers Program, appointed by the Governor;

(4) two members of Vermont's Regional Planning Commissions, appointed by the Vermont Association of Planning and Development Agencies; and

(5) one member to represent Vermont municipalities, appointed by the Committee on Committees.

(c) Powers and duties. The Study Committee on State Administration of the National Flood Insurance Program shall:

(1) summarize the existing responsibilities of individual municipalities that are enrolled in the National Flood Insurance Program;

(2) assess the ability of individual municipalities enrolled in the National Flood Insurance Program to comply with the program's minimum standards, identifying the specific barriers to enrollment and compliance;

(3) assess the feasibility of the Department of Environmental

Conservation Rivers Program to take on the administrative burden of the National Flood Insurance Program, including an assessment of the various scales with which this could occur;

(4) estimate the staffing needs to effectively administer the National Flood Insurance Program for Vermont's municipalities;

(5) recommend how to phase in a proposed state-administered National Flood Insurance Program; and

(6) propose to the General Assembly funding sources to support all potential administrative costs for a proposed state-administered National Flood Insurance Program, including the permanent full-time classified staff positions in the Department of Environmental Conservation's Rivers Program needed to establish a flood hazard area permitting program and a permitting fee for applications to the Department of Environmental Conservation's Rivers Program and other potential funding sources.

(d) Assistance. For purposes of scheduling meetings and administrative support, the Study Committee shall have the assistance of the Office of Legislative Operations. For purposes of providing legal assistance and drafting of legislation, the Study Committee shall have the assistance of the Office of Legislative Counsel. For the purpose of providing fiscal assistance, the Study Committee shall have the assistance of the Joint Fiscal Office.

(e) Report. On or before August 15, 2025, the Study Committee shall submit a written report to the General Assembly with its findings and any recommendations for legislative action. Any recommendation for legislative action shall be as draft legislation.

(f) Meetings.

(1) The Office of Legislative Counsel shall call the first meeting of the Study Committee.

(2) The Committee shall select a chair from among its members at the first meeting.

(3) A majority of the membership of the Study Committee shall constitute a quorum.

(4) The Study Committee shall cease to exist on December 31, 2025.

(g) Compensation and reimbursement.

(1) For attendance at meetings during adjournment of the General Assembly, a legislative member of the Study Committee shall be entitled to per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 23 for not more than eight meetings. These payments shall be made from

monies appropriated to the General Assembly.

(2) Other members of the Study Committee shall be entitled to per diem compensation and reimbursement of expenses as permitted under 32 V.S.A. § 1010 for not more than eight meetings. These payments shall be made from monies appropriated to the General Assembly.

Sec. 11. TRANSITION; IMPLEMENTATION; APPROPRIATIONS;
POSITIONS

(a) The Secretary of Natural Resources shall initiate rulemaking, including pre-rulemaking, for the rules required in Sec. 5 of this act, 10 V.S.A. § 754 (river corridor development), not later than July 1, 2025. The rules shall be adopted on or before July 1, 2027.

(b) Prior to the effective date of the rules required in Sec. 5 of this act, 10 V.S.A. § 754 (river corridor development), the Secretary of Natural Resources shall continue to implement the Vermont Flood Hazard Area and River Corridor Rule as that rule existed on July 1, 2024 for development exempt from municipal regulation in flood hazard areas and relevant river corridors.

(c) The Secretary of Natural Resources shall not require a permit under the rules required by 10 V.S.A. § 754 for development in a flood hazard area or mapped river corridor for development that has the same meaning as “development” under 44 C.F.R. § 59.1 for activities for which:

(1) all necessary local, State, or federal permits have been obtained prior to January 1, 2028 and the permit holder takes no subsequent act that would require a permit or registration under 10 V.S.A. chapter 32; or

(2) a complete application for all applicable local, State, and federal permits has been submitted on or before January 1, 2028, provided that the applicant does not subsequently file an application for a permit amendment that would require a permit under 10 V.S.A. chapter 32 and that substantial construction of the impervious surface or cleared area commences within two years following the date on which all applicable local, State, and federal permits become final.

(d) In addition to other funds appropriated to the Agency of Natural Resources in fiscal year 2025:

(1) the amount of \$300,000.00 shall be appropriated from the General Fund to fund two new positions to adopt the State Flood Hazard Area Standards required under Sec. 6 of this act and to assist municipalities in the adoption of the State Flood Hazard Area Standards; and

(2) the amount of \$225,000.00 is appropriated from the General Fund

for the purpose of contracting costs necessary to support adoption of the State Flood Hazard Area Standards required under Sec. 6 of this act.

* * * Wetlands * * *

Sec. 12. 10 V.S.A. § 901 is amended to read:

§ 901. WATER RESOURCES MANAGEMENT POLICY

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

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

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

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

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

(13) “Dam removal” has the same meaning as in section 1080 of this title.

Sec. 14. 10 V.S.A. § 916 is amended to read:

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

The Secretary shall revise the Vermont significant wetlands inventory maps to reflect wetland determinations issued under section 914 of this title and rulemaking by the panel under section 915 of this title. (a) On or before January 1, 2026, and not less than annually thereafter, the Agency of Natural Resources shall update the Vermont Significant Wetlands Inventory (VSWI) maps. The annual updates to the VSWI shall include integration of georeferenced shapefiles or similar files for all verified delineations performed within the State and submitted to the Agency of Natural Resources as part of a permit application, as well as a wetlands determination issued under section 914 of this title and rulemaking conducted pursuant to section 915 of this title. The VSWI layer shall include integration of any additional town specific inventories of otherwise unmapped wetlands performed by consultants on the Agency’s Wetland Consultant List if the consultant has presented the map to a municipality or the Agency of Natural Resources.

(b) On or before January 1, 2030, the Secretary of Natural Resources shall

complete High Quality Wetlands Inventory (NWI) Plus level mapping for all of the tactical basins in the State. The high-quality mapping shall include a ground truthing component, as recommended by the U.S. Fish and Wildlife Service (USFWS). Once all tactical basins are mapped, the Agency shall evaluate the need for NWI Plus level map updates on a five-year cycle, simultaneously with updates to the corresponding tactical basin plan.

Sec. 15. 10 V.S.A. §§ 918 and 919 are added to read:

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

(a) On or before July 1, 2025, the Secretary of Natural Resources shall amend the Vermont Wetlands Rules pursuant to 3 V.S.A. chapter 25 to clarify that the goal of wetlands regulation and management in the State is the net gain of wetlands to be achieved through protection of existing wetlands and restoration of wetlands that were previously adversely affected. This condition shall not apply to wetland, river, and flood plain restoration projects, including dam removals.

(b) The Vermont Wetlands Rules shall prioritize the protection of existing intact wetlands from adverse effects. Where a permitted activity in a wetland will cause more than 5,000 square feet of adverse effects that cannot be avoided, the Secretary shall mandate that the permit applicant restore, enhance, or create wetlands or buffers to compensate for the adverse effects on a wetland. The amount of wetlands to be restored, enhanced, or created shall be calculated, at a minimum, by determining the acreage or square footage of wetlands permanently drained or filled as a result of the permitted activity and multiplying that acreage or square footage by two, to result in ratio of 2:1 restoration to wetland loss. Establishment of a buffer zone contiguous to a wetland shall not substitute for the restoration, enhancement, or creation of wetlands. Adverse impacts to wetland buffers shall be compensated for based on the effects of the impact on wetland function.

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

(1) Require an applicant for a wetland permit that authorizes adverse impacts to more than 5,000 square feet of wetlands to compensate for those impacts through restoration, enhancement, or creation of wetland resources. Wetland, river, and floodplain restoration projects, including dam removal, shall be an allowed use within a wetland under this rule.

(2) Incorporate the net gain rule into requirements for permits issued after September 1, 2025.

(3) Establish a set of parameters and restoration ratios applicable to permittee-designed restored wetland restoration projects, including a minimum 2:1 ratio of restoration to loss to compensate for permanently filled or drained

wetlands. These parameters shall include consideration of the following factors:

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

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

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

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

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

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

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

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

§ 919. WETLANDS PROGRAM REPORTS

(a) On or before April 30, 2025, and annually thereafter, the Secretary of Natural Resources shall submit to the House Committee on Environment and Energy and to the Senate Committee on Natural Resources and Energy a report on annual losses and gains of significant wetlands in the State. The report shall include:

(1) the location and acreage of Class II wetland and buffer losses permitted by the Agency in accordance with section 913 of this title, for which construction of the permitted project has commenced;

(2) the acreage of Class II wetlands and buffers gained through permit-

related enhancement and restoration;

(3) the number of site visits and technical assistance calls conducted by the Agency of Natural Resources, the number of permits processed by the Agency, and any enforcement actions that were taken by the Agency or the Office of the Attorney General in the previous year for violations of this chapter; and

(4) an updated mitigation summary of the extent of wetlands restored on-site compared with compensation performed off-site, in-lieu fees paid, or conservation.

(b) On or before April 30, 2027, and every five years thereafter, the Agency of Natural Resources shall submit to the House Committee on Environment and Energy and to the Senate Committee on Natural Resources and Energy a comprehensive report on the status of wetlands in the State. The report shall include:

(1) an analysis of historical trends of wetlands, including data analyzing the projects for which wetland permits were issued by county and tactical basin;

(2) the results of each NWI Plus Mapping Project, including net acres mapped, dominant vegetative composition, connected tributaries, locations of confirmed ground truthing, if applicable, and any other hydrologic soil or vegetative observations or trends noted; and

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

Sec. 16. 10 V.S.A. § 1274(a) is amended to read:

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

(1) Enjoin future discharges.

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

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

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

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

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

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

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

Sec. 17. APPROPRIATIONS

In addition to other funds appropriated to the Agency of Natural Resources in fiscal year 2025, the amount of \$300,000.00 shall be appropriated from the General Fund to fund two new positions to implement and comply with the requirements of Secs. 12–15 of this act.

* * * Dam Safety * * *

Sec. 18. 10 V.S.A. chapter 43 is amended to read:

CHAPTER 43. DAMS

§ 1079. PURPOSE

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

§ 1080. DEFINITIONS

As used in this chapter:

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

* * *

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

* * *

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

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

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

(ii) was partially breached; and

(iii) has not been properly removed or mitigated.

(C) “Dam” ~~shall~~ does not mean:

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

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

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

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

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

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

(7) “Federal dam” means:

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

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

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

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

(10) “Dam removal” means all actions needed to eliminate the risk of dam failure-related inundation below the dam and include partial or complete structural removal to the extent that the dam is no longer capable of impounding water, liquid, or sediment.

§ 1081. JURISDICTION OF DEPARTMENT AND PUBLIC UTILITY COMMISSION

(a) Powers and duties. Unless otherwise provided, the powers and duties authorized by this chapter shall be exercised by the Department, ~~except that the Public Utility Commission shall exercise those powers and duties over nonfederal dams and projects that relate to or are incident to the generation of electric energy for public use or as a part of a public utility system of Environmental Conservation.~~ Nonfederal dams at which the generation of electric energy is subject to licensing jurisdiction under the Federal Power Act, 16 U.S.C. chapter 12, subchapter 1, and the dam structure is regulated separately from electric generation shall ~~not~~ be under the jurisdiction of the ~~Public Utility Commission~~ Department, except to the extent of regulation at those facilities related solely to electric generation under the Federal Power Act.

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

(c) Transfer of records. ~~Upon transfer of jurisdiction as set forth in subsection (b) of this section and upon written request, the State agency having former jurisdiction over a dam shall transfer copies of all records pertaining to the dam to the agency acquiring jurisdiction~~ Upon transfer of jurisdiction of any dam from the Public Utility Commission to the Department, the Public Utility Commission shall transfer copies of all records pertaining to the subject dam, including record drawings, construction drawings, engineering investigations and analyses, photographs, inspection reports, design, permitting, and emergency action planning documents and any other files pertaining to the subject dam, to the Department in digital and hardcopy format acceptable to the Department within 30 days following the jurisdictional transfer.

§ 1082. AUTHORIZATION

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

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

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

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

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

§ 1083. APPLICATION

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

(1) the location; the height, length, and other dimensions; and any proposed changes to any existing dam;

(2) the approximate area to be overflowed and the approximate number of or any change in the number of cubic feet of water to be impounded;

(3) the plans and specifications to be followed in the construction, remodeling, reconstruction, altering, lowering, raising, removal, breaching, or adding to;

(4) any change in operation and maintenance procedures; and

(5) other information that the ~~State agency having jurisdiction~~ Department considers necessary to review the application.

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

§ 1084. DEPARTMENT OF FISH AND WILDLIFE; INVESTIGATION

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

§ 1085. NOTICE OF APPLICATION

Upon receipt of the application required by section 1082 of this title, the ~~State agency having jurisdiction~~ Department shall give notice to the legislative body of each municipality in which the dam is located and to all interested persons. The Department shall provide notice of and an opportunity for public comment in accordance with chapter 170 of this title.

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

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

§ 1086. DETERMINATION OF PUBLIC GOOD; CERTIFICATES

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

(1) the quantity, kind, and extent of cultivated agricultural land that may be rendered unfit for use by or enhanced by the project, including both the immediate and long-range agricultural land use impacts;

(2) scenic and recreational values;

(3) fish and wildlife;

(4) forests and forest programs;

(5) [Repealed.]

(6) the existing uses of the waters by the public for boating, fishing, swimming, and other recreational uses;

(7) the creation of any hazard to navigation, fishing, swimming, or other public uses;

(8) the need for cutting clean and removal of all timber or tree growth from all or part of the flowage area;

(9) the creation of any public benefits;

(10) attainment of the Vermont water quality standards;

(11) any applicable State, regional, or municipal plans;

(12) municipal grand lists and revenues; and

(13) ~~public safety; and~~

~~(14)~~ in the case of the proposed removal of a dam that formerly related to or was incident to the generation of electric energy, but that was not subject to a memorandum of understanding dated prior to January 1, 2006 relating to its removal, the potential for and value of future power production.

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

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

(d) In the case of a proposed removal of a dam that is under the jurisdiction

of the Department and that formerly related to or was incident to the generation of electric energy but that was not subject to a memorandum of understanding dated before January 1, 2006 relating to its removal, the Department shall consult with the Department of Public Service regarding the potential for and value of future power production at the site.

§ 1087. REVIEW OF PLANS AND SPECIFICATIONS

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

§ 1089. EMPLOYMENT OF ENGINEER

~~With the approval of the Governor, the State agency having jurisdiction may employ an engineer to investigate the property, review the plans and specifications, and make such additional investigation as the State agency shall deem necessary, and such engineer shall report to the State agency his or her findings in respect thereto.~~ The Department shall employ engineers to perform the duties required under this chapter to adequately provide for public safety.

§ 1090. CONSTRUCTION SUPERVISION

The construction, alteration, or other action authorized in section 1086 of this title shall be supervised by an engineer employed by the applicant. Upon completion of the authorized project, the engineer shall ~~certify~~ provide confirmation to the ~~agency having jurisdiction~~ Department that the project has been completed in ~~conformance~~ general accordance with the approved plans and specifications and dam order conditions.

§ 1095. UNSAFE DAM; PETITION; HEARING; EMERGENCY

(a) On receipt of a petition signed by ~~no~~ not fewer than ~~ten~~ 10 interested persons or the legislative body of a municipality, the ~~State agency having jurisdiction~~ Department shall, or upon its own motion it may, institute investigations by an engineer as described in section 1087 of this title regarding the safety of any existing nonfederal dam or portion of the dam of any size. The ~~agency~~ Department may fix a time and place for hearing and shall give notice in the manner it directs to all interested persons. The engineer shall present ~~his or her~~ the engineer's findings and recommendations

at the hearing. After the hearing, if the Department finds that the nonfederal dam or portion of the dam as maintained or operated is unsafe or is a menace to people or property above or below the dam, it shall issue an order directing reconstruction, repair, removal, breaching, draining, or other action it considers necessary to improve the safety of the dam sufficiently to protect life and property as required by the ~~State agency having jurisdiction~~ Department.

(b) If, upon the expiration of ~~such a~~ a date as may be ordered, the person owning legal title to ~~such the~~ the dam or the owner of the land on which the dam is located has not complied with the order directing the reconstruction, repair, breaching, removal, draining, or other action of ~~such the~~ the unsafe dam, the ~~State agency having jurisdiction~~ Department may petition the Superior Court in the county in which the dam is located to enforce its order or exercise the right of eminent domain to acquire the rights that may be necessary to effectuate a remedy as the public safety or public good may require. If the order has been appealed, the court may prohibit the exercise of eminent domain by the ~~State agency having jurisdiction~~ Department pending disposition of the appeal.

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

§ 1099. APPEALS

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

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

* * *

§ 1105. INSPECTION OF DAMS

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

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

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

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

(c) Dam safety reports. If a dam inspection report is completed by the ~~State agency having jurisdiction, the agency~~ Department, the Department shall provide the person owning legal title to the dam or the owner of the land on which the dam is located with a copy of the inspection report and shall make all inspection reports available on the Department website for public review. For dams owned by the State, the Department shall provide the inspection report to the designated point of contact for the dam at the State entity owning the dam and make the information available to the public on the Department website.

(d) Notice of unsafe State dam. Notwithstanding the timing for submission of a dam safety report under subsection (c) of this section, if the Department determines that a State dam is unsafe and in need of repair or removal, the Department shall immediately notify the designated point of contact of the State entity that owns the dam and make this information available to the public on the Department website.

§ 1106. UNSAFE DAM SAFETY REVOLVING LOAN FUND

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

(b) Funds from the Dam Safety Revolving Loan Fund shall be available for both emergency and nonemergency projects. To be eligible for a Dam Safety Loan, the dam shall meet the conditions associated with the funding type:

(1) Emergency funding. To provide emergency funding for critical, time-sensitive temporary safety or risk reduction measures such as reservoir drawdown, partially or fully breaching the dam, stabilization or buttressing of the dam, including engineering and emergency action planning activities. To be eligible for emergency funding, the dam must meet the following criteria:

(A) The dam must be under the regulatory jurisdiction of the DEC Dam Safety Program, including dams owned by the State of Vermont.

(B) The dam must be in need of critical time-sensitive safety or risk

reduction measures in order to protect public safety and property, or be a dam found to be unsafe or a menace to public safety under section 1095 of this title. The Dam Safety Program shall be able to access the fund on behalf of owners in cases of emergency, immediate need, or in the case of unwilling or unable dam owners.

(2) Nonemergency funding. For permanent safety or risk reduction projects such as repair, rehabilitation, or removal, including engineering, analyses, design, and construction. To be eligible for nonemergency funding, the dam must meet the following criteria:

(A) The dam must be under the regulatory jurisdiction of the DEC Dam Safety Program, excluding dams owned by the State of Vermont.

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

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

(D) For funding for nonemergency construction, the applicant shall provide proof that applicable local, State, and federal permits have been obtained, including the State Dam Safety Order.

(E) To be eligible for nonemergency funding, an alternatives analysis of dam repair, rehabilitation, and removal options that considers an evaluation of risk reduction, dam safety and ecological resilience and public benefits considerations, and costs shall be completed, pursuant to the rule adopted by the Department.

(F) Under this subdivision (b)(2), only engineering, analysis, design, and construction that result in acceptable risk reduction are eligible for loan subsidy.

(c) The Fund created by this section shall be established and held separate and apart from any other funds or monies of the State and shall be used and administered exclusively for the purposes set forth in this section. The funds shall be invested in the same manner as permitted for investment of funds belonging to the State or held in the Treasury. The Fund shall consist of the following:

(1) Such such sums as may be appropriated or transferred thereto from time to time by the General Assembly, the Emergency Board, or the Joint

Fiscal Committee during such times as the General Assembly is not in session;

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

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

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

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

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

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

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

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

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

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

(D) a projection of loan repayment income to the fund.

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

§ 1107. HAZARD POTENTIAL CLASSIFICATIONS

(a) ~~The State agency having jurisdiction over a nonfederal dam listed in the Vermont Dam Inventory~~ Department shall assess the hazard potential

classification of ~~the dam~~ all nonfederal dams listed in the Vermont Dam Inventory based on the potential loss of human life, property damage, and economic loss that would occur in the event of the failure of the dam. There shall be four hazard potential classifications: high, significant, low, and minimal.

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

* * *

§ 1110. RULEMAKING

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

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

(2) standards for:

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

(B) operation and maintenance of a dam;

(C) inspection, monitoring, record keeping, and reporting;

(D) repair, breach, or removal of a dam;

(E) application for authorization under section 1082 of this title; and

(F) the development of an emergency action plan for a dam, including guidance on how to develop an emergency action plan, the content of a plan, and when and how an emergency action plan should be updated;

(3) criteria for the hazard potential classification of dams in the State;

(4) a process by which a person owning legal title to a dam or a person owning the land on which the dam is located shall register a dam and record the existence of the dam in the lands records; ~~and~~

(5) requirements for the person owning legal title to a dam or the person owning the land on which the dam is located to conduct inspections of the dam; and

(6) requirements for access to financing and subsidy from the Dam Safety Revolving Loan Fund, including the requirement that an alternatives analysis be performed by an engineering consultant hired by either the dam

owner or the Department.

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

~~Annually on or before January 1, the Public Utility Commission shall submit to the Department updated inventory information from the previous calendar year for dams under the jurisdiction of the Public Utility Commission. [Repealed.]~~

Sec. 19. 2018 Acts and Resolves No. 161, Sec. 2, as amended by 2023 Acts and Resolves No. 79, Sec. 1, is further amended to read:

Sec. 2. DAM REGISTRATION PROGRAM REPORT

On or before January 1, ~~2025~~ 2026, the Department of Environmental Conservation shall submit a report to the House Committees on ~~Natural Resources, Fish, and Wildlife~~ Environment and Energy and on Ways and Means and the Senate Committees on Natural Resources and Energy and on Finance. The report shall contain:

- (1) an evaluation of the dam registration program under 10 V.S.A. chapter 43;
- (2) a recommendation on whether to modify the fee structure of the dam registration program;
- (3) a summary of the dams registered under the program, organized by amount of water impounded and hazard potential classification; and
- (4) an evaluation of any other dam safety concerns related to dam registration.

Sec. 20. 2018 Acts and Resolves No. 161, Sec. 3, as amended by 2023 Acts and Resolves No. 79, Sec. 2, is further amended to read:

Sec. 3. ADOPTION OF RULES

The Secretary of Natural Resources shall adopt the rules required under 10 V.S.A. § 1110 as follows:

- (1) the rules required under 10 V.S.A. § 1110(1) (exemptions), § 1110(3) (emergency action plan), § 1110(4) (hazard potential classification), § 1110(5) (dam registration), and § 1110(6) (dam inspection) shall be adopted on or before July 1, 2020; and
- (2) the rules required under 10 V.S.A. § 1110(2) (dam design standards) shall be adopted on or before July 1, ~~2024~~ 2025.

Sec. 21. DAM SAFETY DIVISION POSITIONS

In addition to other funds appropriated to the Agency of Natural Resources

in fiscal year 2025:

(1) \$900,000.00 is appropriated from the General Fund for the purposes of funding six new permanent full-time classified positions in the Dam Safety Division of the Department of Environmental Conservation; and

(2) \$2,000,000.00 is appropriated from the General Fund for the purposes of implementation of the Dam Safety Revolving Loan Fund.

Sec. 22. STUDY COMMITTEE ON DAM EMERGENCY OPERATIONS
PLANNING

(a) Creation. There is created the Study Committee on Dam Emergency Operations Planning to review and recommend how to improve regional emergency action planning for hazards caused by dam failure, including how to shift responsibility for emergency planning from individual municipalities to regional authorities, how to improve regional implementation of dam emergency response plans, and how to fund dam emergency action planning at the regional level.

(b) Membership. The Study Committee on Dam Emergency Operations Planning shall be composed of the following members:

(1) one current member of the House of Representatives, who shall be appointed by the Speaker of the House;

(2) one current member of the Senate, who shall be appointed by the Committee on Committees;

(3) one member of the Department of Environmental Conservation Dam Safety Program, who shall be appointed by the Governor;

(4) two members representing regional planning commissions in the State, who shall be appointed by the Committee on Committees;

(5) one member of the Division of Emergency Management, who shall be appointed by the Governor;

(6) two legal owners of a dam, one of whom shall own a dam capable of generating electricity, who shall be appointed by the Speaker upon recommendation of the Dam Safety Program of the Department of Environmental Conservation; and

(7) one or more emergency management director or incident commander from a municipality with experience in developing and carrying out an emergency operation plan.

(c) Powers and duties. The Study Committee on Dam Emergency Operations Planning shall:

(1) identify those dams in the State that are classified as high-hazard dams;

(2) summarize the existing responsibilities of individual municipalities to prepare for and implement existing emergency response plans, including how those responsibilities are funded and whether placing responsibility with individual municipalities is appropriate;

(3) identify the regional planning commissions in which a dam identified under subdivision (1) of this subsection are located;

(4) recommend the content for a regional emergency action plan for each dam identified under subdivision (1) of this subsection, including identifying necessary evacuations, how evacuees will be sheltered and provided care, and the location of emergency management centers for each dam;

(5) recommend who should prepare a regional emergency action plan for each dam identified under subdivision (1) of this subsection, including the basis for the recommendation and the role that regional planning commissions should play in the preparation of the plans;

(6) estimate the cost of the production of regional emergency action plans for dams; and

(7) estimate the cost for regional planning commissions and municipalities to implement an emergency action plan, including a recommended source of the funding.

(d) Assistance. For purposes of scheduling meetings and administrative support, the Study Committee shall have the assistance of the Office of Legislative Operations. For purposes of providing legal assistance and drafting of legislation, the Study Committee shall have the assistance of the Office of Legislative Counsel. For the purpose of providing fiscal assistance, the Study Committee shall have the assistance of the Joint Fiscal Office.

(e) Report. On or before December 15, 2024, the Study Committee shall submit a written report to the General Assembly with its findings and any recommendations for legislative action. Any recommendation for legislative action shall be submitted as draft legislation.

(f) Meetings.

(1) The Office of Legislative Counsel shall call the first meeting of the Study Committee.

(2) The Committee shall select a chair from among its members at the first meeting.

(3) A majority of the membership of the Study Committee shall constitute a quorum.

(4) The Study Committee shall cease to exist on March 1, 2025.

(g) Compensation and reimbursement.

(1) For attendance at meetings during adjournment of the General Assembly, a legislative member of the Study Committee shall be entitled to per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 23 for not more than eight meetings. These payments shall be made from monies appropriated to the General Assembly.

(2) Other members of the Study Committee shall be entitled to per diem compensation and reimbursement of expenses as permitted under 32 V.S.A. § 1010 for not more than eight meetings. These payments shall be made from monies appropriated to the General Assembly.

Sec. 23. DETERMINATION OF FEDERAL ENERGY REGULATORY COMMISSION (FERC) JURISDICTION

Nonfederal hydroelectric projects without a valid pre-1920 license may be subject to the Federal Energy Regulatory Commission's (FERC) jurisdiction and may require a license from FERC to operate. By July 31, 2025, the Department of Environmental Conservation, in coordination with the Public Utility Commission, shall file petitions for a Declaratory Order from FERC to determine whether projects currently under the Public Utility Commission's jurisdiction fall under FERC's hydroelectric licensing jurisdiction. The Public Utility Commission shall provide notice to the dam owner when a petition is filed with FERC.

Sec. 24. TRANSITION; DAMS

(a) On or before July 1, 2028, the Department of Environmental Conservation shall assume jurisdiction under 10 V.S.A. chapter 43 of all dams within the jurisdiction of the Public Utility Commission as of July 1, 2024.

(b) On or before January 15, 2026 and annually thereafter until the Department of Environmental Conservation has assumed jurisdiction under 10 V.S.A. chapter 43 over all dams from the Public Utility Commission, the Department of Environmental Conservation shall report to the Senate Committee on Natural Resources and Energy and the House Committee on Environment and Energy regarding progress in preparation for transfer of jurisdiction of the dams from the Public Utility Commission to the Department of Environmental Conservation.

(c) Notwithstanding the effective date of Sec. 18 of this act (transfer of dam safety jurisdiction), the Public Utility Commission shall retain jurisdiction

over dams within its control as of July 1, 2024 until the Department of Environmental Conservation assumes the jurisdiction of each dam as required by subsection (a) of this section. While the Public Utility Commission continues to exercise authority under 10 V.S.A. chapter 43, as it existed on June 30, 2024, the Public Utility Commission shall apply the dam design standard rules as adopted by the Department of Environmental Conservation.

(d) The rulemaking required under Sec. 18 (dam safety transfer) of this act under 10 V.S.A. § 1110(6) and (7) shall be completed on or before July 1, 2027.

(e) Funding from the Dam Safety Revolving Fund, as amended by Sec. 18 of this act (dam safety transfer) shall be available for nonemergency use upon the completion of rulemaking required under 10 V.S.A. §1110 (6) and (7).

* * * Basin Planning * * *

Sec. 25. 10 V.S.A. § 1253(d) is amended to read:

(d)(1) Through the process of basin planning, the Secretary shall determine what degree of water quality and classification should be obtained and maintained for those waters not classified by the Board before 1981 following the procedures in sections 1254 and 1258 of this title. Those waters shall be classified in the public interest. The Secretary shall prepare and maintain an overall surface water management plan to assure that the State water quality standards are met in all State waters. The surface water management plan shall include a schedule for updating the basin plans. The Secretary, in consultation with regional planning commissions and the Natural Resources Conservation Council, shall revise all 15 basin plans and update the basin plans on a five-year rotating basis. On or before January 15 of each year, the Secretary shall report to the House Committees on Agriculture, Food Resiliency, and Forestry and on Natural Resources, Fish, and Wildlife Environment and Energy and to the Senate Committees on Agriculture and on Natural Resources and Energy regarding the progress made and difficulties encountered in revising basin plans. The report shall include a summary of basin planning activities in the previous calendar year, a schedule for the production of basin plans in the subsequent calendar year, and a summary of actions to be taken over the subsequent three years. The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report to be made under this subsection.

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

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

- (B) identify wetlands that should be reclassified as Class I wetlands;
- (C) identify projects or activities within a basin that will result in the protection and enhancement of water quality;

* * *

- (J) provide for public notice of a draft basin plan; ~~and~~
- (K) provide for the opportunity of public comment on a draft basin plan; and

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

* * * Expanded Polystyrene Foam * * *

Sec. 26. 10 V.S.A. chapter 47, subchapter 2B is added to read:

Subchapter 2B. Expanded Polystyrene Foam

§ 1321. DEFINITIONS

As used in this subchapter:

(1) “Buoy” means any float or marker that is attached to a mooring anchor and either is suitable for attachment to a boat through the use of a pennant or other device or facilitates the attachment of the boat to the mooring anchor.

(2) “Dock” means an unenclosed structure secured to land, land under waters, or a mooring or a floating structure that is used for mooring boats or for recreational activities, such as a swimming, fishing, or sunbathing platform. A dock includes a structure that is partially enclosed or has two or more levels.

(3) “Encapsulated” means a protective covering or physical barrier between the polystyrene device and the water.

(4) “Expanded polystyrene foam” means a thermoplastic petrochemical material utilizing the styrene monomer that is processed according to multiple techniques, including fusion of polymer spheres, injection molding, form molding, and extrusion-blow molding.

(5) “Floating structure” means a structure constructed on or in a water of the State that is supported by flotation and is secured in place by a piling or mooring anchor, including boathouses, fueling structures, floating homes, marinas, walkways, or boarding platforms.

(6) “Mooring anchor” means any anchor or weight that is designed to:

- (A) rest on the land under water or be buried in the land under water;
- (B) be attached to a buoy or floating structure by a chain, rope, or other mechanism; and
- (C) be left in position permanently or on a seasonal basis.

§ 1322. INSTALLATION, REPAIR, REMOVAL, AND SALE OF BUOYS, DOCKS, OR FLOATING STRUCTURES

(a) Encapsulation required. Expanded polystyrene foam used for flotation, including buoys, docks, or floating structures, shall be encapsulated by a protective covering or shall be designed to prevent the expanded polystyrene foam from disintegrating into the water.

(b) Prohibition; unencapsulated polystyrene and open-cell (beaded) polystyrene; repair. No person shall use unencapsulated polystyrene or open-cell (beaded) polystyrene for the installation of a new buoy, dock, or floating structure on the waters of the State. Unencapsulated polystyrene materials and open-cell beaded polystyrene shall not be used for the repair of buoys, docks, or floating structures on waters of the State.

(c) Methods of encapsulation.

(1) Encapsulation of a buoy, dock, or floating structure required under subsection (a) of this section shall completely cover or be a physical barrier between the expanded polystyrene foam and the water. Small gaps up to 0.75-inch-diameter ballast holes are permitted in the physical barrier or covering provided they are 0.1 percent or less of the square footage of the buoy, dock, or floating structure.

(2) All materials and methods of encapsulation shall provide an effective physical barrier between the expanded polystyrene foam and the water for a period not less than 10 years. Any fasteners used to hold encapsulation materials together shall be effectively treated or be of a form resistant to corrosion and decay.

(d) Disposal. Irreparable encapsulated polystyrene, unencapsulated polystyrene, and irreparable encapsulated open-cell (beaded) polystyrene used for flotation, including buoys, docks, or floating structures, shall be properly disposed of in an approved manner.

(e) Sale or distribution. No person shall sell, offer for sale, or otherwise distribute for compensation within the State dock floats, mooring buoys, or anchor or navigation markers made, in whole or in part, from expanded polystyrene foam that is:

- (1) not wholly encapsulated or encased within a more durable material;

or

(2) open-cell (beaded) polystyrene, including materials that are encapsulated and unencapsulated.

§ 1323. NUISANCE

The use of unencapsulated polystyrene as a flotation device in waters of the State, including in any dock system, float, mooring system, or buoy, is declared a nuisance and public health hazard and may be prosecuted as provided in the Vermont Revised Statutes.

§ 1324. RULEMAKING

The Secretary may adopt rules to implement the requirements of this subchapter.

Sec. 27. APPROPRIATIONS

The amount of \$50,000.00 shall be appropriated from the General Fund to the Department of Environmental Conservation to support education and outreach regarding the requirements and prohibitions for the use of expanded polystyrene foam or open-cell (beaded) polystyrene in waters of the State.

* * * Floodplain Management; Use Value Appraisal Program * * *

Sec. 28. STUDY COMMITTEE ON ENROLMENT OF FLOODPLAIN MANAGEMENT LAND IN USE VALUE APPRAISAL; REPORT

(a) Creation. There is created the Study Committee on Enrolling Floodplain Management Land in the Use Value Appraisal Program to determine whether or how to authorize the enrollment of land designated for floodplain management in the Use Value Appraisal (UVA) Program.

(b) Membership. The Study Committee shall be composed of the following members:

(1) one current member of the House of Representatives, who shall be appointed by the Speaker of the House;

(2) one current member of the Senate, who shall be appointed by the Committee on Committees;

(3) the Director of Property Valuation and Review or designee;

(4) the Director of the Rivers Program within the Watershed Management Division at the Department of Environmental Conservation or designee;

(5) the Secretary of Agriculture, Food and Markets or designee;

(6) a member of the Current Use Advisory Board, who shall be

appointed by the Speaker of the House; and

(7) a member of a statewide environmental organization, who shall be appointed by the Committee on Committees.

(c) Powers and duties. The Study Committee shall evaluate the following questions:

(1) whether and why real property managed to provide flood mitigation or flood resilience services should or should not be authorized to enroll in the UVA Program; and

(2) if the Study Committee recommends that real property that provides flood mitigation or flood resilience services should be allowed to enroll in the UVA Program, what should be the criteria for enrollment, what should be the use value rate for qualifying enrolled real property, and what should be the timeline for enrollment.

(d) Assistance. The Study Committee shall have the administrative, technical, legal, and fiscal assistance of the Department of Taxes.

(e) Report. On or before January 15, 2025, the Study Committee shall submit a written report to the Senate Committees on Finance and on Natural Resources and Energy and the House Committees on Ways and Means and on Environment and Energy with its findings and any recommendations for legislative action, including proposed legislative language.

(f) Meetings.

(1) The Director of Property Valuation and Review or designee shall call the first meeting of the Study Committee to occur on or before September 1, 2025.

(2) The Study Committee shall select a chair from among its members at the first meeting.

(3) A majority of the membership shall constitute a quorum.

(4) The Study Committee shall cease to exist on March 1, 2025.

(g) Compensation and reimbursement.

(1) For attendance at meetings during adjournment of the General Assembly, a legislative member of the Study Committee shall be entitled to per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 23 for not more than eight meetings. These payments shall be made from monies appropriated to the General Assembly.

(2) Other members of the Study Committee shall be entitled to per diem compensation and reimbursement of expenses as permitted under 32 V.S.A.

§ 1010 for not more than eight meetings. These payments shall be made from monies appropriated to the Department of Taxes.

* * * Effective Dates * * *

Sec. 29. EFFECTIVE DATES

(a) This section and Secs. 19 (dam registration report), 20 (dam design standard rules), and 23 (FERC petition) shall take effect on passage.

(b) All other sections shall take effect July 1, 2024, except that:

(1) in Sec. 18, 10 V.S.A. § 1106 (Dam Safety Revolving Loan Fund) shall take effect on passage;

(2) under Sec. 25 (basin planning), the requirement shall be effective for updated Tactical Basin Plans that commence on or after January 1, 2025; and

(3) in Sec. 26 (expanded polystyrene foam requirements), 10 V.S.A. § 1324 (ANR rulemaking) shall take effect on passage.

And that when so amended the bill ought to pass.

Senator Lyons, for the Committee on Appropriations, to which the bill was referred, reported that the bill be amended as recommended by the Committee on Natural Resources and Energy with the following amendments thereto:

First: In Sec. 3, Department of Environmental Conservation; River Corridor Base Map; infill mapping; education and outreach, by striking out subsection (c) in its entirety

Second: In Sec. 10, Study Committee on State Administration of the National Flood Insurance Program, in subsection (b), by striking out subdivisions (1) and (2) in their entirety and by renumbering the remaining subdivisions in subsection (b) to be numerically correct

and in Sec. 10, by striking out the newly renumbered subdivision (b)(3) in its entirety and inserting in lieu thereof of a new subdivision (b)(3) to read as follows:

(3) two members to represent Vermont municipalities, one member from a municipality with a population of 5,000 or more persons, appointed by the Committee on Committees, and one member from a municipality with a population of fewer than 5,000 persons, appointed by the Speaker of the House.

and in Sec. 10, by striking out subsection (d) in its entirety and inserting in lieu thereof a new subsection (d) to read as follows:

(d) Assistance. For purposes of scheduling meetings, administrative support, legal assistance, and fiscal assistance, the Study Committee shall have the assistance of the Agency of Natural Resources.

and in Sec. 10, in subdivision (f)(1), after “(1) The” and before “shall call the first meeting” by striking out “Office of Legislative Counsel” and inserting in lieu thereof Secretary of Natural Resources or designee

and in Sec. 10, by striking out subsection (g) in its entirety and inserting in lieu thereof a new subsection (g) to read as follows:

(g) Compensation and reimbursement. Members of the Study Committee shall be entitled to per diem compensation and reimbursement of expenses as permitted under 32 V.S.A. § 1010 for not more than eight meetings. These payments shall be made from monies appropriated to the General Assembly.

Third: In Sec. 11, transition; implementation; appropriations; positions, by striking out subsection (d) in its entirety

Fourth: By striking out Sec. 17, appropriations, in its entirety and inserting in lieu thereof the following:

Sec. 17. [Deleted.]

Fifth: By striking out Sec. 21, Dam Safety Division Positions, in its entirety and inserting in lieu thereof the following:

Sec. 21. [Deleted.]

Sixth: In Sec. 22, Study Committee on Dam Emergency Operations Planning, in subsection (b), by striking out subdivisions (1) and (2) in their entirety and by renumbering the remaining subdivisions in subsection (b) to be numerically correct

and in Sec. 22, by striking out subsection (d) in its entirety and inserting in lieu thereof a new subsection (d) to read as follows:

(d) Assistance. For purposes of scheduling meetings, administrative support, legal assistance, and fiscal assistance, the Study Committee shall have the assistance of the Agency of Natural Resources.

and in Sec. 22, in subdivision (f)(1), after “(1) The” and before “shall call the first meeting” by striking out Office of Legislative Counsel and inserting in lieu thereof Secretary of Natural Resources or designee

and in Sec. 22, by striking out subsection (g) in its entirety and inserting in lieu thereof a new subsection (g) to read as follows:

(g) Compensation and reimbursement. Members of the Study Committee shall be entitled to per diem compensation and reimbursement of expenses as

permitted under 32 V.S.A. § 1010 for not more than eight meetings. These payments shall be made from monies appropriated to the General Assembly.

Seventh: In Sec. 24, transition; dams, in subsection (d), after “§ 1110(6)” and before “shall be completed” by striking out “and (7)”

Eighth: By striking out Sec. 27, appropriations, in its entirety and inserting in lieu thereof the following:

Sec. 27. [Deleted.]

Ninth: In Sec. 28, Study Committee on Enrollment of Floodplain Management Land in Use Value Appraisal; report, in subsection (b), by striking out subdivisions (1) and (2) in their entireties and by renumbering the remaining subdivisions in subsection (b) to be numerically correct

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and the recommendation of the Committee on Natural Resources and Energy was amended as recommended by the Committee on Appropriations.

Thereupon, the pending question, Shall the bill be amended as recommended by the Committee on Natural Resources and Energy, as amended? was agreed to.

Thereupon, third reading was ordered on a roll call, Yeas, 24 Nays, 4.

Senator Bray having demanded the yeas and nays, they were taken and are as follows:

Roll Call

Those Senators who voted in the affirmative were: Baruth, Bray, Champion, Chittenden, Clarkson, Collamore, Cummings, Gulick, Hardy, Harrison, Hashim, Kitchel, Lyons, MacDonald, McCormack, Perchlik, Ram Hinsdale, Sears, Starr, Vyhovsky, Watson, Westman, White, Wrenner.

Those Senators who voted in the negative were: Brock, Ingalls, Weeks.

Those Senators absent and not voting were: Mazza, Norris, *Williams.

*Senator Williams explained his vote as follows:

“Thank you, Mr. President,

”I rise to thank the Committee on Natural Resources and Energy and the work that they have done, as well as the Committee on Appropriations. But I also want to make a statement that the “long pole in the tent” and that is from a former life I lived, is planning. And one of the things that we need to do is sit down and come up with a vision within the next five years where we are going

to go and look at how we fund things to make sure we get the funding priority put in the right place.”

Adjournment

On motion of Senator Baruth, the Senate adjourned until one o'clock in the afternoon on Thursday, March 21, 2024.