

1 H.92

2 Introduced by Representative Deen of Westminster

3 Referred to Committee on

4 Date:

5 Subject: Conservation and development; water resources; dam registration

6 Statement of purpose of bill as introduced: The bill would require a person

7 who owns legal title to a dam in the State to register the dam with the

8 Department of Environmental Conservation.

9 An act relating to the registration of dams

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

11 * * * Registration of Dams * * *

12 Sec. 1. 10 V.S.A. chapter 43 is amended to read:

13 CHAPTER 43. DAMS

14 § 1079. PURPOSE

15 It is the purpose of this chapter to protect public safety through the

16 inventory, inspection, and evaluation of dams in the State.

17 § 1080. DEFINITIONS

18 As used in this chapter:

19 (1) "Department" means the ~~department of environmental conservation~~

20 Department of Environmental Conservation.

1 (2) “Person” means any individual; partnership; company; corporation;
2 association; joint venture; trust; municipality; the ~~state~~ State of Vermont or any
3 agency, department, or subdivision of the ~~state~~ State, any federal agency, or
4 any other legal or commercial entity.

5 (3) ~~“Person in interest”~~ “Interested person” means, in relation to any
6 dam, a person; who has riparian rights affected by that dam; who has a
7 substantial interest in economic or recreational activity affected by the dam; ~~or;~~
8 whose safety would be endangered by a failure of the dam; or who notifies the
9 Department of interest in the dam.

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

12 (5) “Time” shall be reckoned in the manner prescribed by 1 V.S.A.
13 § 138.

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

17 (B) “Dam” includes an artificial barrier that:

18 (i) previously was capable of impounding water or other liquids;

19 (ii) was partially breached; and

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

1 (C) “Dam” shall not mean:

2 (i) barriers or structures created by beaver or any other wild

3 animal as that term is defined in section 4001 of this title;

4 (ii) a highway culvert;

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

7 (iv) underground or elevated tanks to store water otherwise
8 regulated by the Agency of Natural Resources;

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

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

12 (7) “Pond” means a natural body of standing water.

13 § 1081. JURISDICTION OF DEPARTMENT AND PUBLIC SERVICE

14 BOARD

15 (a) Unless otherwise provided, the powers and duties authorized by this
16 chapter shall be exercised by the ~~department, except that the public service~~
17 ~~board shall exercise those powers and duties over dams and projects that relate~~
18 ~~to or are incident to the generation of electric energy for public use or as a part~~
19 ~~of a public utility system~~ Department, except that dams and projects that relate
20 to or are incident to the generation of electric energy for public use or a part of
21 a public utility system shall be subject to oversight by rules of the Public

1 Service Board relating to transmission or electricity and to the interconnection
2 of the dam or project to the electrical grid.

3 ~~(b) Transfer of jurisdiction. Jurisdiction over a dam is transferred from the~~
4 ~~department to the public service board whenever the Federal Energy~~
5 ~~Regulatory Commission grants a license to generate electricity at the dam or~~
6 ~~whenever the public service board receives an application for a certificate of~~
7 ~~public good for electricity generation at that dam. Jurisdiction is transferred~~
8 ~~from the public service board to the department whenever such a federal~~
9 ~~license expires or is otherwise lost, whenever such a certificate of public good~~
10 ~~is revoked or otherwise lost, or whenever the public service board denies an~~
11 ~~application for a certificate of public good. [Repealed.]~~

12 ~~(c) Upon transfer of jurisdiction as set forth above and upon written~~
13 ~~request, the state~~ A State ~~agency having former jurisdiction over a dam shall~~
14 ~~transfer copies of all records pertaining to the dam to the agency acquiring~~
15 ~~jurisdiction~~ Department.

16 § 1082. AUTHORIZATION

17 ~~(a) No person shall construct, enlarge, raise, lower, remodel, reconstruct, or~~
18 ~~otherwise alter any dam, pond or impoundment or other structure which is or~~
19 ~~will be capable of impounding more than 500,000 cubic feet of water or other~~
20 ~~liquid after construction or alteration, or remove, breach or otherwise lessen~~
21 ~~the capacity of an existing dam that is or was capable of impounding more than~~
22 ~~500,000 cubic feet within or along the borders of this state where land in this~~

1 ~~state is proposed to be overflowed, or at the outlet of any body of water within~~
2 ~~this state, unless authorized by the state agency having jurisdiction so to do.~~
3 ~~However, in the matter of flood control projects where cooperation with the~~
4 ~~federal government is provided for by the provisions of section 1100 of this~~
5 ~~title that section shall control~~ (1) Except as provided in subdivision (2) of this
6 subsection, a person shall not construct, enlarge, raise, lower, remodel,
7 reconstruct, remove, breach, lessen the capacity of, or otherwise alter any dam
8 or natural outlet of a pond capable of impounding more than 500,000 cubic
9 feet of water or other liquid unless authorized by the Department.

10 (2) The relevant requirements of sections 1100 and 1103 of this title
11 shall govern the authorization of a flood control project involving construction
12 by, or State cooperation with, the federal government.

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

17 § 1083. APPLICATION

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

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

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

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

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

7 (5) other information that the ~~state agency having jurisdiction~~
8 Department considers necessary to ~~properly~~ review the application.

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

11 § 1083a. ~~AGRICULTURAL DAMS~~

12 ~~(a) Notwithstanding the provisions of sections 1082, 1083, 1084, and 1086~~
13 ~~of this title, the owners of an agricultural enterprise who propose, as an integral~~
14 ~~and exclusive part of the enterprise, to construct or alter any dam, pond or~~
15 ~~impoundment or other structure requiring a permit under section 1083 shall~~
16 ~~apply to the natural resources conservation district in which his land is located.~~
17 ~~The natural resources conservation districts created under the provisions of~~
18 ~~chapter 31 of this title shall be the state agency having jurisdiction and shall~~
19 ~~review and approve the applications in the same manner as would the~~
20 ~~department. The districts may request the assistance of the department for any~~
21 ~~investigatory work necessary for a determination of public good and for any~~
22 ~~review of plans and specifications as provided in section 1086.~~

1 ~~(b) As used in this section, “agricultural enterprise” means any farm,~~
2 ~~including stock, dairy, poultry, forage crop and truck farms, plantations,~~
3 ~~ranches and orchards, which does not fall within the definition of “activities~~
4 ~~not engaged in for a profit” as defined in Section 183 of the Internal Revenue~~
5 ~~Code and regulations relating thereto. The growing of timber does not in itself~~
6 ~~constitute farming.~~

7 ~~(c) Notwithstanding the provisions of this section, jurisdiction shall revert~~
8 ~~to the department when there is a change in use or when there is a change in~~
9 ~~ownership which affects use. In those cases the department may, on its own~~
10 ~~motion, hold meetings in order to determine the effect on the public good and~~
11 ~~public safety. The department may issue an order modifying the terms and~~
12 ~~conditions of approval.~~

13 ~~(d) The natural resources conservation districts may adopt any rules~~
14 ~~necessary to administer this chapter. The districts shall adhere to the~~
15 ~~requirements of chapter 25 of Title 3 in the adoption of those rules.~~

16 ~~(e) Notwithstanding the provisions of chapter 7 of Title 3, the attorney~~
17 ~~general shall counsel the districts in any case where a suit has been instituted~~
18 ~~against the districts for any decision made under the provisions of this chapter.~~

19 [Repealed.]

20 § 1084. DEPARTMENT OF FISH AND WILDLIFE; INVESTIGATION

21 ~~The commissioner of fish and wildlife~~ Commissioner of Fish and Wildlife
22 shall investigate the potential effects on fish and wildlife habitats of any

1 proposal subject to section 1082 of this title and shall certify the results to the
2 ~~state agency having jurisdiction~~ Department prior to any hearing or meeting
3 relating to the determination of public good and public safety.

4 § 1085. NOTICE OF APPLICATION

5 Upon receipt of the application required by section 1082 of this title, the
6 ~~State agency having jurisdiction~~ Department shall give notice to the legislative
7 body of each municipality in which the dam is ~~allocated~~ located and to all
8 ~~persons~~ interested persons.

9 (4) The Department shall proceed in accordance with chapter 170 of this
10 title.

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

1 § 1086. DETERMINATION OF PUBLIC GOOD; CERTIFICATES

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

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

9 (2) scenic and recreational values;

10 (3) fish and wildlife;

11 (4) forests and forest programs;

12 (5) the need for a minimum water discharge flow rate schedule to
13 protect the natural rate of flow and the water quality of the affected waters;

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

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

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

20 (9) the creation of any public benefits;

21 (10) ~~the classification, if any, of the affected waters under chapter 47 of~~
22 ~~this title~~ consistency with the Vermont water quality standards;

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

2 (12) municipal grand lists and revenues;

3 (13) public safety; and

4 (14) in the case of the proposed removal of a dam that formerly related

5 to or was incident to the generation of electric energy, but which was not

6 subject to a memorandum of understanding dated prior to January 1, 2006,

7 relating to its removal, the potential for and value of future power production.

8 (b) If the ~~State agency having jurisdiction~~ Department finds that the
9 proposed project will serve the public good, and, in case of any waters
10 designated by the Secretary as outstanding resource waters, will preserve or
11 enhance the values and activities sought to be protected by designation, the
12 ~~agency~~ Department shall issue its order approving the application. The order
13 shall include conditions for minimum stream flow to protect fish and instream
14 aquatic life, as determined by the Agency of Natural Resources, and such other
15 conditions as the ~~agency having jurisdiction~~ Department considers necessary to
16 protect any element of the public good listed ~~above~~ in subsection (a) of this
17 section. Otherwise it shall issue its order disapproving the application.

18 (c) The ~~Agency~~ Department shall provide the applicant and interested
19 ~~parties~~ persons with copies of its order.

20 (d) ~~In the case of a proposed removal of a dam that is under the jurisdiction~~
21 ~~of the Department and that formerly related to or was incident to the generation~~
22 ~~of electric energy but that was not subject to a memorandum of understanding~~

1 ~~dated before January 1, 2006 relating to its removal, the Department shall~~
2 ~~consult with the Department of Public Service regarding the potential for and~~
3 ~~value of future power production at the site. [Repealed.]~~

4 § 1087. REVIEW OF PLANS AND SPECIFICATIONS

5 Upon receipt of an application, the ~~state agency having jurisdiction~~
6 Department shall employ a ~~registered~~ an engineer experienced in the design
7 and investigation of dams to investigate the property, review the plans and
8 specifications, and make additional investigations as it considers necessary to
9 ensure that the project adequately provides for the public safety. The engineer
10 shall report his or her findings to the ~~agency~~ Department. The Department
11 may assess expenses incurred in retaining an engineer under this section to the
12 applicant under 3 V.S.A. § 2809.

13 § 1089. EMPLOYMENT OF ~~HYDRAULIC~~ ENGINEER

14 With the approval of the ~~governor~~ Governor, the ~~state agency having~~
15 ~~jurisdiction~~ Department may employ a ~~competent hydraulic~~ an engineer to
16 investigate the property, review the plans and specifications, and make such
17 additional investigation as ~~such agency~~ the Department shall deem necessary,
18 and such engineer shall report to the ~~agency~~ Department his or her findings in
19 respect thereto. The Department may assess expenses incurred in retaining an
20 engineer under this section to the person owning legal title to the dam under
21 3 V.S.A. § 2809.

1 § 1090. CONSTRUCTION SUPERVISION

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

7 § 1095. UNSAFE DAM; PETITION; HEARING; EMERGENCY

8 (a) On receipt of a petition signed by ~~not less~~ no fewer than ten ~~persons in~~
9 ~~interest~~ interested persons or the legislative body of a municipality, the ~~agency~~
10 ~~having jurisdiction~~ Department shall, or upon its own motion it may, institute
11 investigations by an engineer as described in section 1087 of this title
12 regarding the safety of any existing dam or portion of a dam, of any size. The
13 ~~agency~~ Department may fix a time and place for hearing and shall give notice
14 in the manner it directs to all parties interested. The engineer shall present his
15 or her findings and recommendations at the hearing. After the hearing, if the
16 ~~agency~~ Department finds that the dam or portion of the dam as maintained or
17 operated is unsafe or is a menace to people or property above or below the
18 dam, it shall issue an order directing reconstruction, repair, removal, breaching,
19 draining, or other action it considers necessary to ~~make the dam safe~~ improve
20 the safety of the dam.

21 (b) If, upon the expiration of such date as may be ordered, the ~~owner of~~
22 person owning legal title to such dam has not complied with the order directing

1 the reconstruction, repair, breaching, removal, draining, or other action of such
2 unsafe dam, the ~~state agency having jurisdiction~~ Department may petition the
3 ~~superior court~~ Superior Court in the county in which the dam is located to
4 enforce its order or exercise the right of eminent domain to acquire such rights
5 as may be necessary to effectuate a remedy as the public safety or public good
6 may require. If the order has been appealed, the court may prohibit the
7 exercise pending disposition of the appeal.

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

13 * * *

14 § 1097. ~~SURVEY OF EXISTING DAMS; ORDERS FOR PROTECTION OF~~
15 ~~SALMON~~

16 ~~The fish and wildlife board shall forthwith make a survey of all dams within~~
17 ~~the state which impound more than three hundred thousand cubic feet of water~~
18 ~~and determine if the operation of such dams adversely affects the propagation~~
19 ~~and preservation of salmon, or materially diminishes the amount of flow in~~
20 ~~portions of a stream likely to be used for such preservation and propagation of~~
21 ~~salmon. If the board determines that the operation of an existing dam does~~
22 ~~adversely affect the propagation and preservation of salmon or materially~~

1 ~~diminishes the flow of water over portions of stream likely to be used therefor,~~
2 ~~it shall order such changes in operation for such length of time or times as are~~
3 ~~reasonably necessary in its judgment to fully protect such preservation and~~
4 ~~propagation of salmon. Any order of the board made under this section shall be~~
5 ~~based upon facts found and stated. Appeal from an order of the board may be~~
6 ~~taken in the manner prescribed for appeals from the public service board as~~
7 ~~provided in chapter 1 of Title 30. [Repealed.]~~

8 § 1098. REMOVAL OF OBSTRUCTIONS; APPROPRIATION

9 The ~~department~~ Department may contract for the removal of sandbars,
10 debris, or other obstructions from streams which the ~~department~~ Department
11 finds that while so obstructed may be a menace in time of flood, or endanger
12 property or life below, or the property of riparian owners. The expense of
13 investigation and removal of the obstruction shall be paid by the ~~state~~ State
14 from funds provided for that purpose.

15 § 1099. APPEALS

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

18 (b) ~~Appeals from actions or orders of the public service board may be taken~~
19 ~~in the supreme court in accord with 30 V.S.A. § 12. [Repealed.]~~

20 * * *

1 § 1105. INSPECTION OF DAMS

2 (a) Dam safety engineer. ~~The State agency having jurisdiction~~ Department
3 shall employ an engineer to make periodic inspections of nonfederal dams in
4 the State to determine their condition and the extent, if any, to which they pose
5 a ~~potential~~ possible or ~~actual~~ probable threat to life and property, or shall
6 ~~promulgate~~ adopt rules pursuant to 3 V.S.A. chapter 25 of Title 3 to require an
7 adequate level of inspection by an independent ~~registered~~ engineer ~~experienced~~
8 ~~in the design and investigation of dams.~~ The ~~agency~~ Department shall provide
9 the person owning legal title to the dam with the findings of the inspection and
10 any recommendations.

11 (b) Dam safety reports. If a dam inspection report is completed by the
12 Department, the Department shall provide the person owning legal title to the
13 dam with a copy of the inspection report. If a person owning legal title to a
14 dam receives a dam inspection safety report from the Department or if the
15 person is required to complete a dam inspection report under rules adopted
16 under this chapter, the person owning legal title to the dam shall file the dam
17 inspection report in the records of the town or towns where the dam is located,
18 provided that no person shall be required to file critical energy infrastructure
19 information, as that term is defined under 18 C.F.R. § 388.112. A town clerk
20 shall index and record dam inspection reports in the land records pursuant to
21 24 V.S.A. §§ 1154 and 1161.

22 * * *

1 § 1107. HAZARD POTENTIAL CLASSIFICATIONS

2 Dams required to be registered with the Department under section 1108 of
3 this title shall be assessed a hazard potential classification based on the
4 potential loss of human life, property damage, and economic loss that would
5 occur in the event of the failure of a dam. The hazard potential classifications
6 for a dam are as follows:

7 (1) “High hazard potential dam” means a dam that, if it were to fail,
8 would result in any of the following:

9 (A) probable loss of life;

10 (B) major damage to habitable structures, including residences,
11 hospitals, convalescent homes, schools, roadways, or other structures; or

12 (C) excessive economic loss.

13 (2) “Significant hazard potential dam” means a dam that, if it were to
14 fail, would result in any of the following:

15 (A) possible loss of life;

16 (B) minor damage to habitable structures, including residences,
17 hospitals, convalescent homes, schools, roadways, or other structures; or

18 (C) appreciable economic loss.

19 (3) “Low hazard potential dam” means a dam that, if it were to fail,
20 would result in any of the following:

21 (A) no loss of life;

1 (B) no damage to habitable structures, including residences,
2 hospitals, convalescent homes, schools, roadways, or other structures; or

3 (C) minimal economic loss.

4 (4) "Negligible hazard potential dam" means a dam that, if it were to
5 fail, would result in all of the following:

6 (A) no measurable damage to roadways;

7 (B) no measurable damage to habitable structures, including
8 residences, hospitals, convalescent homes, schools, roadways, or other
9 structures; and

10 (C) negligible economic loss.

11 § 1108. DAM REGISTRATION

12 (a) Dam registration.

13 (1) A person owning legal title to a dam shall register the dam with the
14 Department if:

15 (A) the dam is capable of impounding 500,000 cubic feet or more of
16 water or other liquid; or

17 (B) the dam is listed on the Vermont Dam Inventory maintained by
18 the Department.

19 (2) A financial institution, as that term is defined in 8 V.S.A.

20 § 11101(32), is exempt from the requirements of this section and the fee
21 required under 3 V.S.A. § 2822 when the financial institution acquires title to a
22 dam through foreclosure under 12 V.S.A. chapter 172.

1 (b) Registration process.

2 (1) The Department shall provide a registration form to persons owning
3 legal title to a dam. The Department shall allow registration in paper or
4 electronic format.

5 (2) As part of the registration, the person owning legal title to a dam
6 shall:

7 (A) notify the Department of the location of the dam, including the
8 coordinates of the location in latitude and longitude or an equivalent accurate
9 method; and

10 (B) notify the Department of the initial hazard potential classification
11 of the dam based on information available to the person owning legal title to
12 the dam.

13 (c) Hazard potential classifications.

14 (1) The Department shall use the U.S. Army Corps of Engineers' Rules
15 for the National Program for Inspection of Non-federal Dams as guidance in
16 the classification and reclassification of the hazard potential classification of
17 dams in the State.

18 (2) For the purposes of initial registration of a dam under subsection (a)
19 of this section, the Department shall develop guidance and educational
20 materials regarding how a person shall assess the hazard potential
21 classification of a dam in a manner consistent with the hazard potential

1 classification adopted by the Department under subdivision (1) of this
2 subsection.

3 (3) The Department shall review the hazard potential classifications of
4 dams registered under this section and may, after inspection of a dam,
5 reclassify the hazard potential classification of a dam based on the location of
6 the structure in proximity to human habitation and the potential economic loss
7 from failure of the dam. The Department shall notify the person owning legal
8 title to the dam of any reclassification of the hazard potential classification
9 of a dam.

10 (4) A person owning legal title to a dam may appeal the Department's
11 reclassification of the hazard potential of a dam under this section under
12 chapter 220 of this title.

13 (d) Notification of dam registration requirement. If the Department
14 identifies the person owning legal title of an unregistered dam, the Department
15 shall notify the person owning legal title to the dam of the requirement to
16 register the dam under this section. The person owning legal title to a dam
17 who receives notice of a required registration under this subsection shall have
18 60 days from the date of the Department's notice to submit a complete dam
19 registration form to the Department.

20 (e) Failure to file dam registration. If a person owning legal title to a dam
21 fails to submit the dam registration form as required under subsection (b) of
22 this section, the Department may inspect the dam or retain an engineer to

1 inspect the dam. The Department shall assess against the person owning legal
2 title to the dam the cost to the Department of the inspection.

3 (f) Addition to Vermont Dam Inventory. When the Department is
4 informed, through registration under this section or other means, of the
5 location of a dam that is not on the Vermont Dam Inventory, the Department
6 shall add the dam to the Vermont Dam Inventory and shall notify, if
7 identifiable, the person owning legal title to the dam of the addition of the dam
8 to the inventory.

9 (g) Recording. A person owning legal title to a dam shall file the dam
10 registration required by this section or rules adopted under this chapter in the
11 records of the town or towns where the dam is located. A town clerk shall
12 index and record dam registrations in the land records pursuant to 24 V.S.A.
13 §§ 1154 and 1161.

14 (h) Lien on property on which dam is situated. When the Department takes
15 action under this section to inspect a dam or when the Department takes any
16 action under this chapter to alleviate or address a risk to life or property from a
17 dam, the Department may file a lien in favor of the State on the property on
18 which the dam is located and on the buildings and structures located on that
19 property in order to secure repayment to the State of the costs of the inspection
20 or other action. The lien shall arise at the time demand is made by the
21 Secretary and shall continue until the liability for such sum with interest and
22 costs is satisfied or becomes unenforceable. A lien under this section shall be

1 subordinate to a primary mortgage on the property. The Department shall
2 record notice of a lien under this section in the land records of the town in
3 which the property is located.

4 § 1109. MARKETABILITY OF TITLE

5 The failure of the person owning legal title to a dam to record a dam
6 registration or a dam inspection report when required under this chapter or
7 rules adopted under this chapter shall not create an encumbrance on record title
8 or an effect on marketability of title for the real estate property or properties on
9 which the dam is located, except when the Department files a lien on property
10 under section 1108 of this title.

11 § 1110. RULEMAKING

12 The Commissioner of Environmental Conservation shall adopt rules to
13 implement the requirements of this chapter. The rules shall include:

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

16 (2) standards for:

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

19 (B) operation and maintenance of a dam;

20 (C) monitoring, recordkeeping, and reporting;

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

1 (3) requirements for the development of an emergency action plan for a
2 dam, including guidance on how to develop an emergency action plan, the
3 content of a plan, and when and how an emergency action plan should be
4 updated.

5 § 1111. NATURAL RESOURCES ATLAS; DAM STATUS

6 (a) Submission to Department. Annually on or before January 1, the Public
7 Service Board and the Secretary of Agriculture, Food and Markets shall submit
8 to the Department the presence, location, and hazard potential classification of
9 any dam previously within its jurisdiction learned of within the previous
10 calendar year.

11 (b) Update of Natural Resources Atlas. Beginning on January 1, 2018, the
12 Secretary of Natural Resources shall update the Natural Resources Atlas on the
13 Agency of Natural Resources' website to include the status of dams identified
14 on the Atlas. The Atlas shall include all information submitted under
15 subsection (a) of this section and the presence, location, and hazard potential
16 classification of any dam within the jurisdiction of the Department. The
17 Department shall include on the Atlas the person owning legal title to the dam,
18 if known.

19 (c) Additional information. The Department may enter a memorandum of
20 understanding with the Public Service Board and the Secretary of Agriculture,
21 Food and Markets regarding additional information regarding dams to be
22 submitted to the Department under this section.

1 * * * Transfer of PSB Dams to the Department of
2 Environmental Conservation * * *

3 Sec. 2. TRANSFER OF CERTIFICATE OF PUBLIC GOOD

4 A certificate of public good issued by the Public Service Board under
5 30 V.S.A. § 248 prior to July 1, 2017 for a dam or project that relates to or is
6 incident to the generation of electric energy shall be transferred to the
7 Department of Environmental Conservation on July 1, 2017 and shall be
8 administered and enforced by the Department in the same manner as a dam
9 permit issued under 10 V.S.A. chapter 43.

10 * * * Dam Registration Report * * *

11 Sec. 3. DAM REGISTRATION PROGRAM REPORT

12 On or before January 1, 2019, the Department of Environmental
13 Conservation shall submit a report to the House Committees on Natural
14 Resources, Fish and Wildlife and on Ways and Means, and the Senate
15 Committees on Natural Resources and Energy and on Finance. The report
16 shall contain:

17 (1) an evaluation of the dam registration program under 10 V.S.A.
18 chapter 43;

19 (2) a recommendation on whether to modify the fee structure of the dam
20 registration program;

21 (3) a summary of the dams registered under the program, organized by
22 amount of water impounded and hazard potential classification; and

* * * Implementation * * *

* * * Effective Dates * * *

(2) the requirement to register a dam under 10 V.S.A. § 1108 shall take effect on July 1, 2019.