

1 H.412

2 Introduced by Representatives Atkins of Winooski and Masland of Thetford

3 Referred to Committee on

4 Date:

5 Subject: Conservation; dams; dam safety; dam commissioning

6 Statement of purpose: This bill proposes to require that dams receive permits
7 of limited duration when they are constructed, enlarged, raised, lowered,
8 remodeled, reconstructed, or otherwise altered. It proposes that dams found
9 not to be in the public good are to be removed or breached. It proposes that 25
10 interested persons, a municipal legislative body, or the department of
11 environmental conservation may require a dam not currently regulated to
12 receive a certificate of public good, which shall be a permit for a limited
13 duration. It proposes that if the certificate of public good is disapproved, the
14 dam is to be removed or breached. It proposes that where an unowned dam
15 does not serve the public good or no person is willing to buy the dam, the dam
16 is removed or breached. This bill also proposes to establish a Vermont dam
17 safety state revolving fund to provide loans for the improvement or removal
18 and decommissioning of dams. It proposes to allow municipalities to establish
19 fire districts with a mandate of providing for dam safety, which may be
20 attained by dam improvement or by dam removal and decommissioning. The
21 bill requires that these fire districts be established by act of legislation.

1 An act relating to the permitting, decommissioning, and safety of dams

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

3 * * * Dam Permitting * * *

4 Sec. 1. Sections 1080–1085 of 10 V.S.A. chapter 43 are recodified within
5 subchapter 1, which is added to read:

6 Subchapter 1. Construction and Modification of Dams

7 Sec. 2. 10 V.S.A. chapter 43, subchapter 2 (consisting of §§ 1086–1106) is
8 added to read:

9 Subchapter 2. Repermitting and Removal of Dams

10 Sec. 3. 10 V.S.A. § 1086 is amended to read:

11 § 1086. DETERMINATION OF PUBLIC GOOD; CERTIFICATES

12 * * *

13 (b) If the state agency having jurisdiction finds that the proposed project
14 will serve the public good, and, in case of ~~it is located on~~ any waters
15 designated by the board as outstanding resource waters, will preserve or
16 enhance the values and activities sought to be protected by designation, the
17 agency shall issue ~~its order~~ a permit approving the application. ~~The order~~
18 Otherwise, it shall issue its order denying the permit. A permit issued under
19 this subsection shall include:

1 These requirements may range from a simple written request for reissuance to
2 a submission of all information required by the initial application. A renewal
3 permit shall be issued following all determinations required for an initial
4 permit application.

5 Sec. 4. 10 V.S.A. § 1096 is added to read:

6 § 1096. NONPERMITTED EXISTING DAMS

7 (a) On receipt of a petition signed by not less than 25 persons in interest or
8 the legislative body of a municipality, the department shall, or upon its own
9 motion it may, conduct a public hearing to determine whether a dam not
10 currently subject to a permit issued under this chapter serves the public good as
11 defined by subsection 1086(a) of this title. The agency shall fix a time and
12 place for a hearing, shall post notice in the municipal offices of any
13 municipality in which the dam is located, and shall publish notice in a
14 newspaper of general circulation in the area in which the dam is located at least
15 10 days before the hearing. This subsection shall not apply to dams licensed
16 by the federal government.

17 (b) If the department finds that the nonpermitted existing dam will serve
18 the public good and, in case it is located on any waters designated by the board
19 as outstanding resource waters, will preserve or enhance the values and
20 activities sought to be protected by designation, the department shall issue its
21 permit authorizing continued operation of the dam. Otherwise, it shall issue its

1 order denying the continued operation of the dam. A permit issued under this
2 subsection shall:

3 (1) Include conditions for minimum stream flow to protect fish and
4 instream aquatic life, especially during known spawning seasons, as
5 determined by the secretary of natural resources.

6 (2) Be valid for a time period specified within the permit, not to exceed
7 30 years.

8 (3) Include such other conditions as the secretary considers necessary to
9 protect any element of the public good listed in subsection 1086(a) of this title.

10 (4) Include conditions for minimum stream flow to support existing
11 water uses, including recreational uses.

12 (c) In the order denying the continued operation of the dam, the department
13 shall order the dam to be removed or breached, or both, by a specified date. If,
14 upon the expiration of the specified date, the owner of such dam has not
15 complied with the order directing the removal or breaching of the dam, the
16 department may petition the supreme court to enforce its order.

17 (d) A permit issued under this section shall be renewed in the same manner
18 as prescribed in subsection 1086(e) of this title.

19 (e) If the owner of the dam is unknown and does not provide notice of
20 ownership to the department within 90 days after the publication of notice as
21 provided in subsection (a) of this section, the department shall notify, by

1 certified mail, all landowners abutting the water body created by the dam. The
2 agency shall fix a time and place for a hearing in the area where the dam is
3 located. If the department determines that the dam serves the public good, as
4 defined by subsection 1086(a) of this title, the department shall issue a permit
5 for the dam's continued operation, subject to the same requirements as
6 provided in subsection (b) of this section, provided that a person, financially
7 capable of operating and maintaining the dam in a manner safe to people and
8 property, is willing to acquire the dam. If no such owner is found or if the
9 department determines that the dam is not in the public good, the department
10 shall bring an action in supreme court for the removal or breach of the dam.
11 The court will hear such a petition within 60 days of the date it was filed.

12 * * * Creation of Dam Revolving Fund * * *

13 Sec. 5. 24 V.S.A. § 4751 is amended to read:

14 § 4751. DECLARATION OF POLICY

15 It is hereby declared to be in the public interest to foster and promote timely
16 expenditures by municipalities for water supply, water pollution control, dam
17 safety, and solid waste management, each of which is declared to be an
18 essential governmental function when undertaken and implemented by a
19 municipality. It is also declared to be in the public interest to promote
20 expenditures for certain existing ~~privately-owned~~ privately owned public water
21 systems and certain ~~privately-owned~~ privately owned wastewater and potable

1 water supply systems to bring those systems into compliance with federal and
2 state standards and to protect public health.

3 Sec. 6. 24 V.S.A. § 4753 is amended to read:

4 § 4753. REVOLVING LOAN FUNDS; AUTHORITY TO SPEND; REPORT

5 (a) There is hereby established a series of special funds to be known as:

6 * * *

7 (9) The Vermont dam safety state revolving fund which shall be used to
8 provide loans to municipalities and certain privately owned water systems for
9 planning, designing, constructing, repairing, improving, or removing and
10 decommissioning a dam in order to preserve property and protect the public
11 safety.

12 * * *

13 Sec. 7. 24 V.S.A. § 4754 is amended to read:

14 § 4754. LOAN APPLICATION

15 A municipality may apply for a loan, the proceeds of which shall be used to
16 acquire, design, plan, construct, enlarge, repair, or improve a ~~publicly owned~~
17 publicly owned sewage system, sewage treatment or disposal plant, pollution
18 control facility, water supply, water system, or solid waste handling and
19 disposal facility, or certain ~~privately owned~~ privately owned wastewater
20 systems as described in section 4763 of this title, or to implement a related
21 management program. A municipality may apply for a loan, the proceeds of

1 which shall be used to acquire, design, plan, construct, enlarge, repair,
2 improve, or remove and decommission a publicly owned dam, or certain
3 privately owned dams as described in section 4764 of this title, or to
4 implement a related management program. In addition, the loan proceeds shall
5 be used to pay the outstanding balance of any engineering planning advances
6 made to the municipal applicant under chapter 55 of Title 10 and determined
7 by the secretary of the agency of natural resources to be due and payable
8 following construction of the improvements to be financed by the proceeds of
9 the loan or, possibly, following removal and decommissioning of a dam, to be
10 financed by the proceeds of the loan. The bond bank may prescribe any form
11 of application or procedure required of a municipality for a loan hereunder.
12 Such application shall include such information as the bond bank shall deem
13 necessary for the purpose of implementing this chapter.

14 Sec. 8. 24 V.S.A. § 4756(a) is amended to read:

15 (a) No construction loan or loan for the purchase of land or conservation
16 easements to a municipality shall be made under this chapter, nor shall any part
17 of any revolving fund which is designated for project construction be expended
18 under section 4757 of this title, until such time as:

19 (1) the secretary shall certify to the bond bank that all water supply and
20 wastewater permits, land use, subdivision, public building, and discharge
21 permits, necessary to construct the improvements or the dam removal and

1 decommissioning to be financed by the loan will be issued to the applicant
2 municipality prior to disbursement of funds under the loan for construction;

3 (2) the applicant municipality shall certify to the bond bank that it will
4 have secured all state and federal permits, licenses, and approvals necessary to
5 construct the improvements to be financed by the loan, or to remove and
6 decommission the dam, prior to expending funds under the loan;

7 (3) the applicant municipality shall certify to the bond bank that it has
8 established a rate charge or assessment schedule which will generate annually
9 sufficient revenue to pay the principal of and interest on the municipal bond or
10 other debt instrument which evidences the construction loan or the dam
11 removal and decommissioning loan made by the bond bank to the municipality
12 under this chapter and, except in the case of dam removal and
13 decommissioning, to pay reasonably anticipated costs of operating and
14 maintaining the financed project and the system of which it is a part. A
15 covenant by the municipality to set, collect and apply rates, charges, and
16 assessments under sections 3313, 3348, 3616, or 3679 of this title shall be
17 sufficient for the purposes of this certification requirement. When the
18 financing of the project anticipates revenues from the sale of electricity,
19 evidence shall be submitted showing that construction of the project has been
20 authorized and that rates for the project have been approved by the public
21 service board;

1 (4) except in the case of dam removal and decommissioning, the
2 applicant municipality shall certify to the bond bank that it has created a fund
3 under section 2804 of this title, or by any other means permitted by law,
4 including adoption of a resolution or covenant by the legislative branch of the
5 applicant municipality, which fund shall be used only to repair, replace,
6 improve, or enlarge the project for which the loan is made;

7 (5) the applicant municipality, and the project to be financed by the
8 proceeds of the loan, have been designated by the agency, or a department
9 thereof, as eligible to participate in a construction or implementation program
10 or a dam removal and decommissioning program funded wholly or in part by
11 the state or the United States of America;

12 (6) the secretary shall certify to the bond bank that any management
13 program to be financed under ~~subsection~~ subdivision 4753(a)(1) and section
14 4754 of this title is in conformance with all applicable state and federal laws,
15 and all regulations promulgated thereunder;

16 (7) the secretary shall certify to the bond bank that the loan eligibility
17 priority established under section 4758 of this chapter entitles the applicant
18 municipality to immediate financing or assistance under this chapter;

19 (8) the secretary shall certify to the bond bank the outstanding balance
20 of engineering planning advances paid to the applicant municipality under

1 chapter 55 of Title 10, and included within the loan application submitted
2 under section 4754 of this chapter;

3 (9) the applicant municipality, in the case of applications by towns,
4 cities, and incorporated villages, and with respect to all loans awarded after
5 July 1, 1992, shall certify to the bond bank that the project conforms to a duly
6 adopted capital budget and program, consistent with chapter 117 of this title,
7 for meeting the water supply, pollution control, dam safety, or solid waste
8 needs of the municipality; and

9 (10) the applicant municipality, in the case of an application by a
10 district, shall certify to the bond bank that the project conforms to a capital
11 budget and program duly adopted by the district in accordance with the
12 provisions of its charter.

13 Sec. 9. 24 V.S.A. § 4757 is amended to read:

14 § 4757. REVOLVING LOAN FUNDS; ADDITIONAL USES

15 In addition to providing a source of funds from which loans may be made to
16 municipalities under this chapter, each fund created under section 4753 of this
17 chapter may be used for one or more of the following purposes:

18 (1) to make loans, to refund bonds or notes of a municipality issued after
19 March 7, 1985 for sewerage works, or after July 1, 1993 for water supply
20 systems for the purpose of financing the construction of any capital

1 improvements or management program or dam removal and decommissioning
2 described in section 4753 and certified under section 4756 of this title;

3 (2) to guarantee or insure, directly or indirectly, the payment of notes or
4 bonds issued or to be issued by a municipality for the purpose of financing the
5 construction of any capital improvement or management program or dam
6 removal and decommissioning described in section 4754 of this title and
7 certified under section 4756;

8 (3) to guarantee or insure, directly or indirectly, funds established by
9 municipalities for the purpose of financing construction of any capital
10 improvement or dam removal and decommissioning described in section 4754
11 of this title;

12 (4) to invest available fund balances, and to credit the net interest
13 income thereon to the particular fund providing investment funds; and

14 (5) to pay the costs of the bond bank, VEDA and the agency associated
15 with the administration of each fund; provided, however, that no more than
16 four percent of the aggregate of the highest fund balances in any fiscal year
17 shall be used for such purposes, and that a separate account be established
18 outside the drinking water state revolving fund for such purposes. As used in
19 this subsection, costs shall include fiscal, clerical, administrative, and issuance
20 expenditures directly attributable and allocated to the maintenance

1 implementation and administration of the loan funds created under this
2 chapter.

3 Sec. 10. 24 V.S.A. § 4758 is amended to read:

4 § 4758. LOAN PRIORITIES

5 (a) Periodically, and at least annually, the secretary shall prepare and
6 certify to the bond bank a project priority list of those municipalities whose
7 ~~publicly owned~~ publicly owned projects, privately owned dams, or
8 ~~privately owned~~ wastewater systems, are eligible for financing or assistance
9 under this chapter. In determining financing availability for wastewater
10 projects under this chapter, the secretary of the agency having jurisdiction shall
11 apply the following criteria:

12 (1) the probable public benefit to be gained or preserved by the project
13 to be financed;

14 (2) the long-term costs and the resulting benefits to be derived from the
15 project. In determining benefits, induced growth from a project that is not
16 consistent with a town, city, or village plan, duly adopted under chapter 117 of
17 this title, will not be considered;

18 (3) the cost of comparable credit or financing alternatives available to
19 the municipality;

20 (4) the existence of immediate public health, safety, and welfare factors,
21 and compliance therewith;

1 (4) No construction or dam removal and decommissioning loan shall be
2 made to a municipality under this subsection, nor shall any part of any
3 revolving loan made under this subsection be expended until all of the
4 following take place:

5 (A) The secretary certifies to the bond bank that all land use, stream
6 alteration, and dam permits necessary to construct and operate the
7 improvements to be financed by the loan or those necessary to remove and
8 decommission the dam have been issued to the owner of the privately owned
9 dam.

10 (B) The applicant municipality certifies to the bond bank that the
11 private dam owner has secured all state and federal permits, licenses, and
12 approvals necessary to construct and operate the dam improvements or to
13 complete the dam removal and decommissioning to be financed by the loan.

14 (C) The secretary certifies to the bond bank that the loan eligibility
15 priority established under section 4758 of this title entitles the applicant
16 municipality to immediate financing or assistance under this chapter.

17 (b) The bond bank may make loans to a municipality for the preparation of
18 final engineering plans and specifications for the construction, repair,
19 replacement, or removal and decommissioning of a privately owned dam in the
20 same manner as set forth in subsection 4756(b) of this title.

1 * * * Fire District for Dam Safety * * *

2 Sec. 12. 20 V.S.A. § 2481(c) is added to read:

3 (c) In the case of any fire district formed for dam safety purposes,
4 formation of the district and any amendment of the district shall be effective
5 only as established by act of the general assembly.

6 Sec. 13. 20 V.S.A. § 2601 is amended to read:

7 § 2601. GENERALLY

8 A fire district may vote to adopt the town manager system in compliance
9 with chapter 37 of Title 24. It may vote a tax upon the polls and taxable estate
10 or upon the taxable estate only for the protection of property in the district
11 from damage by fire or damage caused by the breach of a dam or other failure
12 of a dam to function properly; for the acquisition, construction, and
13 maintenance of sewers and sewage treatment works; sidewalks; dams; public
14 parks; ~~water works~~ waterworks, water companies, and equipment and real
15 estate used in connection therewith, including reservoirs and dams; for
16 lighting; and for other lawful purposes. The prudential committee and
17 collector shall have the same power in assessing, levying, and collecting the
18 tax, as town officers have in assessing and collecting town taxes, including the
19 collection of interest on overdue taxes. The prudential committee may expend
20 such sums for acquiring, constructing, and maintaining sewers and sewage
21 treatment works; sidewalks; dams; public parks; ~~water works~~ waterworks,

1 water companies, and all equipment and real estate used in connection
2 therewith, including reservoirs and dams; for dam removal and
3 decommissioning; and for lighting purposes as the fire district may vote. The
4 committee may use and occupy such portions of the highways within the
5 district as may be necessary for constructing and maintaining sewers and
6 sewage treatment works; sidewalks; public parks; ~~water works~~ waterworks and
7 mains and for lighting purposes.

8 Sec. 14. 20 V.S.A. § 2604 is amended to read:

9 § 2604. PRESERVATION OF PROPERTY

10 In the name of the district, the prudential committee may make contracts
11 and expenditures for the preservation of property in such district from damage
12 by fire or by the breach of a dam or other failure of a dam to function properly,
13 as ~~they deem~~ it deems necessary, and draw orders on the treasury therefor.
14 However, such committee shall not bind the district for a greater sum than has
15 been voted.