

1 TO THE HONORABLE SENATE:

2 The Committee on Natural Resources and Energy to which was referred House  
3 Bill No. 590 entitled “An act relating to the safety and regulation of dams”  
4 respectfully reports that it has considered the same and recommends that the  
5 Senate propose to the House that the bill be amended by striking out all after  
6 the enacting clause and inserting in lieu thereof the following:

7 \* \* \* Registration and Inspection of Dams \* \* \*

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

9 CHAPTER 43. DAMS

10 § 1080. DEFINITIONS

11 As used in this chapter:

12 (1) “Department” means the ~~department of environmental conservation~~  
13 Department of Environmental Conservation.

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

18 (3) “Person in interest” means, in relation to any dam, a person who has  
19 riparian rights affected by that dam, a substantial interest in economic or  
20 recreational activity affected by the dam, or whose safety would be endangered  
21 by a failure of the dam.

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

3           (5) “Time” shall be reckoned in the manner prescribed by 1 V.S.A.  
4 § 138.

5           (6) “Abandoned dam” means a dam that has no identifiable owner or a  
6 dam for which the owner fails to comply with the requirements of section 1104  
7 of this title.

8           (7) “Dam” means any artificial barrier, impoundment, or structure and  
9 its appurtenant works that are, were, or will be capable of impounding water or  
10 other liquid after construction or alteration, except for:

11           (A) waste management systems constructed and operated according  
12 to the accepted agricultural practices as administered by the Agency of  
13 Agriculture, Food and Markets;

14           (B) impoundments that are capable of impounding no more than  
15 500,000 cubic feet of liquid with a surface area less than one acre;

16           (C) barriers, impoundments, or structures created by beaver or any  
17 other wild animal as that term is defined in **section 4001 of this title**;

18           (D) municipal underground or elevated tanks to store water; or

19           (E) any other structure identified by the Department in a duly  
20 adopted rule.

1           (8) “Pond” means a natural body of water with a volume exceeding  
2           500,000 cubic feet.

3           § 1081. JURISDICTION OF DEPARTMENT AND PUBLIC SERVICE  
4           BOARD

5           (a) Unless otherwise provided, the powers and duties authorized by this  
6           chapter shall be exercised by the ~~department~~, ~~except that the public service~~  
7           ~~board~~ Department, except that the Public Service Board shall exercise those  
8           powers and duties over dams and projects that relate to or are incident to the  
9           generation of electric energy for public use or as a part of a public utility  
10          system.

11          (b) Transfer of jurisdiction. Jurisdiction over a dam is transferred from the  
12          ~~department~~ Department to the ~~public service board~~ Public Service Board  
13          whenever the Federal Energy Regulatory Commission grants a license to  
14          generate electricity at the dam or whenever the ~~public service board~~ Public  
15          Service Board receives an application for a certificate of public good for  
16          electricity generation at that dam. Jurisdiction is transferred from the ~~public~~  
17          ~~service board~~ Public Service Board to the ~~department~~ Department whenever  
18          such a federal license expires or is otherwise lost, whenever such a certificate  
19          of public good is revoked or otherwise lost, or whenever the ~~public service~~  
20          ~~board~~ Public Service Board denies an application for a certificate of public  
21          good.

1 (c) Upon transfer of jurisdiction as set forth above and upon written  
2 request, the ~~state~~ State agency having former jurisdiction shall transfer copies  
3 of all records pertaining to the dam to the agency acquiring jurisdiction.

4 § 1082. AUTHORIZATION

5 (a) No person shall construct, enlarge, raise, lower, remodel, reconstruct, or  
6 otherwise alter any dam, ~~or the natural outlet of a pond or impoundment or~~  
7 ~~other structure which is or will be capable of impounding more than 500,000~~  
8 ~~cubic feet of water or other liquid after construction or alteration~~, or remove,  
9 breach, or otherwise lessen the capacity of an existing dam that is or was  
10 capable of impounding more than 500,000 cubic feet within or along the  
11 borders of this ~~state~~ State where land in this ~~state~~ State is proposed to be  
12 overflowed, or at the outlet of any body of water within this ~~state~~ State, unless  
13 authorized by the ~~state agency having jurisdiction so to do~~ Department or the  
14 Public Service Board. However, in the matter of flood control projects where  
15 cooperation with the federal government is provided for by the provisions of  
16 section 1100 of this title, that section shall control.

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

1 § 1083. APPLICATION

2 (a) Any person who proposes to undertake an action subject to regulation  
3 pursuant to section 1082 of this title shall apply in writing to the ~~state agency~~  
4 ~~having jurisdiction~~, Department or the Public Service Board and shall give  
5 notice thereof to the governing body of the municipality or municipalities in  
6 which the dam or any part of the dam is to be located. The application shall  
7 set forth:

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

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

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

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

16 (5) other information that the ~~state agency having jurisdiction~~  
17 Department or the Public Service Board considers necessary to properly  
18 review the application.

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

1       § 1083a. ~~AGRICULTURAL DAMS~~

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

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

19           ~~(c) Notwithstanding the provisions of this section, jurisdiction shall revert~~  
20       ~~to the department when there is a change in use or when there is a change in~~  
21       ~~ownership which affects use. In those cases the department may, on its own~~

1 ~~motion, hold meetings in order to determine the effect on the public good and~~  
2 ~~public safety. The department may issue an order modifying the terms and~~  
3 ~~conditions of approval.~~

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

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

10 [Repealed.]

11 § 1084. DEPARTMENT OF FISH AND WILDLIFE; INVESTIGATION

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

18 § 1085. NOTICE OF APPLICATION

19 Upon receipt of the application required by section 1082 of this title, the  
20 ~~state agency having jurisdiction~~ Department or the Public Service Board shall  
21 give notice to all persons interested.

1           ~~(1) For any project subject to its jurisdiction under this chapter, on~~ On  
2           the petition of 25 or more persons, ~~the department~~ Department or the Public  
3           Service Board shall, or on its own motion it may, hold a public information  
4           meeting in a municipality in the vicinity of the proposed project to hear  
5           comments on whether the proposed project serves the public good and  
6           provides adequately for the public safety. Public notice shall be given by  
7           posting in the municipal offices of the towns in which the project will be  
8           completed and by publishing in a local newspaper at least 10 days before the  
9           meeting.

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

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

10 (2) scenic and recreational values;

11 (3) fish and wildlife;

12 (4) forests and forest programs;

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

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

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

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

21 (9) the creation of any public benefits;

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

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

4           (12) municipal grand lists and revenues;

5           (13) public safety; and

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

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

1 (c) The ~~agency~~ Department or the Public Service Board shall provide the  
2 applicant and interested parties with copies of its order.

3 (d) ~~In the case of a proposed removal of a dam that is under the jurisdiction~~  
4 ~~of the department and that formerly related to or was incident to the generation~~  
5 ~~of electric energy but that was not subject to a memorandum of understanding~~  
6 ~~dated before January 1, 2006 relating to its removal, the department shall~~  
7 ~~consult with the department of public service regarding the potential for and~~  
8 ~~value of future power production at the site. [Repealed.]~~

9 § 1087. REVIEW OF PLANS AND SPECIFICATIONS

10 Upon receipt of an application, the ~~state agency having jurisdiction~~  
11 Department or the Public Service Board shall employ a ~~registered~~ licensed  
12 engineer experienced in the design and investigation of dams to investigate the  
13 property, review the plans and specifications, and make additional  
14 investigations as it considers necessary to ensure that the project adequately  
15 provides for the public safety. The engineer shall report his or her findings to  
16 the ~~agency~~ Department or the Public Service Board.

17 § 1089. EMPLOYMENT OF HYDRAULIC ENGINEER

18 With the approval of the ~~governor~~ Governor, the ~~state agency having~~  
19 ~~jurisdiction~~ Department or the Public Service Board may employ a competent  
20 hydraulic engineer to investigate the property, review the plans and  
21 specifications, and make such additional investigation as ~~such agency~~ the

1 Department or the Public Service Board shall deem necessary, and such  
2 engineer shall report to the ~~agency~~ Department or the Public Service Board his  
3 or her findings in respect thereto.

4 § 1090. CONSTRUCTION SUPERVISION

5 The construction, alteration, or other action authorized in section 1086 of  
6 this title shall be supervised by a ~~registered~~ licensed engineer employed by the  
7 applicant. Upon completion of the authorized project, the engineer shall  
8 certify to the ~~agency having jurisdiction~~ Department or the Public Service  
9 Board that the project has been completed in conformance with the approved  
10 plans and specifications.

11 § 1095. UNSAFE DAM; PETITION; HEARING; EMERGENCY

12 (a) On receipt of a petition signed by ~~not less~~ no fewer than ten persons in  
13 interest or the legislative body of a municipality, the ~~agency having jurisdiction~~  
14 Department or the Public Service Board shall, or upon its own motion it may,  
15 institute investigations by an engineer as described in section 1087 of this title  
16 regarding the safety of any existing dam or portion of a dam, of any size. The  
17 ~~agency~~ Department or the Public Service Board may fix a time and place for  
18 hearing and shall give notice in the manner it directs to all parties interested.  
19 The engineer shall present his or her findings and recommendations at the  
20 hearing. After the hearing, if the ~~agency~~ Department or the Public Service  
21 Board finds that the dam or portion of the dam as maintained or operated is

1 unsafe or is a menace to people or property above or below the dam, it shall  
2 issue an order directing reconstruction, repair, removal, breaching, draining, or  
3 other action it considers necessary to make the dam safe.

4 (b) If, upon the expiration of such date as may be ordered, the owner of  
5 such dam has not complied with the order directing the reconstruction, repair,  
6 breaching, removal, draining, or other action of such unsafe dam, the ~~state~~  
7 ~~agency having jurisdiction~~ Department or the Public Service Board may  
8 petition the ~~superior court~~ Superior Court in the county in which the dam is  
9 located to enforce its order or exercise the right of eminent domain to acquire  
10 such rights as may be necessary to effectuate a remedy as the public safety or  
11 public good may require. If the order has been appealed, the ~~court~~ Court may  
12 prohibit the exercise pending disposition of the appeal.

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

18 \* \* \*

19 § 1098. REMOVAL OF OBSTRUCTIONS; APPROPRIATION

20 The ~~department~~ Department may contract for the removal of sandbars,  
21 debris, or other obstructions from streams which the ~~department~~ Department

1 finds that while so obstructed may be a menace in time of flood, or endanger  
2 property or life below, or the property of riparian owners. The expense of  
3 investigation and removal of the obstruction shall be paid by the ~~state~~ State  
4 from funds provided for that purpose.

5 § 1099. APPEALS

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

8 (b) Appeals from actions or orders of the ~~public service board~~ Public  
9 Service Board may be taken in the ~~supreme court~~ Supreme Court in accord  
10 with 30 V.S.A. § 12.

11 \* \* \*

12 § 1104. DAM REGISTRATION

13 (a) Application of section. The requirements of this section shall apply to  
14 all dams in the State within the jurisdiction of the Department regardless of  
15 whether the dam is permitted or approved under this chapter. The rules of the  
16 Public Service Board shall control the regulation and inspection of dams and  
17 projects over which the Public Service Board has jurisdiction.

18 (b) Dam registration.

19 (1) On or before January 1, 2015, the person owning legal title to a dam  
20 that has been identified by the Department as meeting the definition of dam

1 under 10 V.S.A. § 1080(7) shall, on a form provided by the Department,  
2 register the dam with the Department.

3 (2) Beginning one year from the date of dam registration, a dam  
4 registered under subdivision (1) shall be subject to an annual dam safety  
5 program operation fee.

6 (c) Department identification of dam.

7 (1) The Department shall post the location and hazard potential  
8 classification of every dam in the State on the Agency of Natural Resources'  
9 website.

10 (2) The standards for hazard classification shall be equivalent to the  
11 standards for low, significant, and high hazard dams under the U.S. Army  
12 Corps of Engineers Hazard Potential Classification of Dams, under 33 C.F.R.  
13 § 222.6. The Department may designate a dam as an unknown hazard dam  
14 when it lacks information sufficient to classify it as a low, significant, or high  
15 hazard dam.

16 (d) Failure to submit registration. If the Department identifies the owner of  
17 an unregistered dam, the Department shall notify the owner of the requirement  
18 to register the dam under this section. The owner of a dam who receives notice  
19 of required registration under this subsection shall have 60 days from the date  
20 of the Department's notice to submit a completed dam registration form to the  
21 Department.

1           (e) Disposition of fees. Fees collected under 3 V.S.A. § 2822(j)(12)(B)  
2           shall be deposited into the Environmental Permit Fund under 3 V.S.A. § 2805  
3           and shall be used to implement the requirements of this chapter.

4           (f) Failure to file dam evaluation report. If an owner of a dam fails to  
5           submit the dam registration form as required under subsection (b) of this  
6           section, the Department may inspect, or retain a licensed professional engineer  
7           to inspect, the dam. The cost to the Department of the inspection shall be  
8           assessed against the owner of the dam.

9           § 1104a. ABANDONED DAMS

10           (a) Designation of dam as abandoned. The Department may designate a  
11           dam as abandoned if the Department:

12                   (1) has identified an owner of the dam, but the owner fails to comply  
13                   with the requirements of section 1104 of this title or the owner fails to comply  
14                   with an action or order required under this chapter; or

15                   (2) cannot identify an owner of the dam; and

16                   (3) publishes notice of a pending determination of abandonment of the  
17                   dam in a newspaper of general circulation in the county in which the dam is  
18                   located; and after 45 days from the date of publication of pending  
19                   determination of abandonment, no person has asserted ownership or control of  
20                   the dam.



1 with subsections 2822(j)(1), (k), (l), and (m) of this title shall be deposited in  
2 the Air Pollution Control Account. The Environmental Permit Fund shall be  
3 used to implement the programs specified under section 2822 of this title. The  
4 Secretary of Natural Resources shall be responsible for the fund and shall  
5 account for the revenues and expenditures of the Agency of Natural Resources.  
6 The Environmental Permit Fund shall be subject to the provisions of 32 V.S.A.  
7 chapter 7, subchapter 5. The Environmental Permit Fund shall be used to  
8 cover a portion of the costs of administering the Environmental Division  
9 established under 4 V.S.A. chapter 27. The amount of \$143,000.00 per fiscal  
10 year shall be disbursed for this purpose.

11 (b) Any fee required to be collected under subdivision 2822(j)(1) of this  
12 title shall be utilized solely to cover all reasonable (direct or indirect) costs  
13 required to support the operating permit program authorized under 10 V.S.A.  
14 chapter 23. Any fee required to be collected under subsection 2822(k), (l), or  
15 (m) of this title for air pollution control permits or registrations or motor  
16 vehicle registrations shall be utilized solely to cover all reasonable (direct or  
17 indirect) costs required to support the programs authorized under 10 V.S.A.  
18 chapter 23. Fees collected pursuant to subsections 2822(k), (l), and (m) of this  
19 title shall be used by the Secretary to fund activities related to the Secretary's  
20 hazardous or toxic contaminant monitoring programs and motor  
21 vehicle-related programs.



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\* \* \* Dam Registration Report \* \* \*

**Sec. 4.** DAM REGISTRATION PROGRAM REPORT

On or before January 1, 2016, the Department of Environmental Conservation shall submit a report to the House Committee on Fish, Wildlife and Water Resources, the House Committee on Ways and Means, the Senate Committee on Natural Resources and Energy, and the Senate Committee on Finance. The report shall contain:

(1) an evaluation of the dam registration program under 10 V.S.A. chapter 43, including whether impoundments of water with less than one acre of surface area should continue to be exempt from the definition of dam;

(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

(4) an evaluation of any other hydrologic concerns related to dam registration.

\* \* \* Effective Date \* \* \*

**Sec. 5.** EFFECTIVE DATE

This act shall take effect on July 1, 2014.

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(Committee vote: \_\_\_\_\_)

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Senator \_\_\_\_\_

FOR THE COMMITTEE