

TO THE HONORABLE SENATE:

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

* * * Wetlands * * *

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

§ 901. WATER RESOURCES ~~AND WETLANDS~~ 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. 2. 10 V.S.A. § 902(13) is added to read:

(13) "Dam removal" has the same meaning as in section 1090 of this title.

Sec. 3. 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 annually thereafter, the Agency of Natural Resources shall update the Vermont Significant Wetlands Inventory (VSWI) maps and the Wetlands Advisory mapping layers for the Agency of Natural Resources' Natural Resources Atlas and as a shapefile on the Vermont Geodata Portal. 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 Wetland Advisory layer shall include integration of any additional town specific inventories 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 tactical basin map updates on a five-year cycle, simultaneously with updates to the corresponding tactical bason plan.~~

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

~~(c) On or before January 1, 2030, the Secretary of Natural Resources shall complete High Quality National 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 that is the best available practice.~~

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

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

Sec. 4. 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 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 previously developed wetlands. As a condition of a permit for activity in a wetland, the Secretary shall require the net gain of wetlands. ~~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 development~~. Where permitted activity within a wetland ~~that is larger than 5,000 square feet will cause adverse effects that cannot be avoided~~, the Secretary shall mandate that the permit applicant restore, enhance, or create wetlands or buffers to compensate for 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 adversely affected by the permitted activity and multiplying the number of adversely affected acres or square feet by two, to result in ratio of 2:1 restoration to disturbance. Establishment of a buffer zone contiguous to a wetland shall not substitute for the restoration, enhancement, or creation of wetlands. Adverse effects on wetland buffers shall also be restored, enhanced, or created at a ratio of 2:1 restoration to disturbance, as established on a case-by-case, per project basis.

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

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

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

(3) Establish a set of parameters and ratios for the permittee-designed restored wetlands, at not less than a 2:1 ratio, which shall include, at a minimum, 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 and wetland function lost as a result of the project;

(C) how the wetland amounts 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 REPORT

(a) On or before April 30, 2025, and annually 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 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 Chapter, 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 Attorney General's office in the previous year for violations of this chapter;

(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; and

(5) 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 Attorney General's office in the previous year for violations of this chapter;

(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.

~~On or before April 30, 2025 and annually 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 report on the status of the wetlands in the State. The report shall include:~~

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

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

~~(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 Attorney General's office in the previous year;~~

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

~~(5) the results of each VSWI Mapping Project, including additional 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~~

~~(6) 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. 5. 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. **6**. APPROPRIATIONS

In addition to other funds appropriated to the Agency of Natural Resources in fiscal year 2025, the amount of \$1,000,000.00 shall be appropriated from the General Fund, of which \$500,000.00 shall be used to fund wetlands mapping required under this act, and \$500,000.00 shall be used to hire additional Agency of Natural Resources staff as necessary to comply with the requirements of Secs. 1–4 of this act.

* * * Development in River Corridors * * *

Sec. 7. 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 exempt from municipal regulation” means land use or activities that are exempt from municipal land use regulation under 24 V.S.A. chapter 117. [Repealed.]~~

* * *

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

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

(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 January 1, 2026, the Secretary shall adopt rules pursuant to 3 V.S.A. chapter 25 that establish requirements for issuing and enforcing permits for development within a flood hazard area or a mapped river corridor in the State.

* * *

(b) Required rulemaking content. The rules shall:

(1) set forth the requirements necessary to ensure ~~uses exempt from municipal regulation are~~ development 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 the requirements and process for a municipality to be delegated the State's permitting authority for development in a flood hazard area or mapped river corridor that is not exempt from municipal regulation when the municipality has adopted a flood hazard bylaw or ordinance 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; and

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

~~(e) (5) Discretionary rulemaking. The rules may establish set forth requirements that exceed the requirements of the National Flood Insurance Program for uses exempt from municipal regulation, 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.~~

(6) The Secretary shall propose to the General Assembly funding sources to support four permanent full-time classified positions in the DEC Rivers

Program to establish and implement the river corridor permitting program, which shall include a proposed fee for permit applications to develop in river corridors based on criteria and locations established in the amended River Corridor Base Map.

* * *

~~(f)~~ (e) Permit requirement. ~~A Beginning on July January 1, 2027Exp6, a~~ a person shall not commence or conduct ~~a use exempt from municipal regulation development~~ in a ~~flood hazard area or 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) 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.

* * *

Sec. 9. TRANSITION; IMPLEMENTATION

(a) The Secretary of Natural Resources shall adopt the rules required in Sec. 8 of this act, 10 V.S.A. § 754, on or before January 1, 2026. The effective date of the rules shall be ~~January 1, 2027~~.

Formatted: Font:

(b) Prior to the effective date of the rules required in Sec. 8 of this act, 10 V.S.A. § 754, the Secretary of Natural Resources shall continue to implement the Vermont Flood Hazard Area and River Corridor Rule for development that is exempt from municipal regulation.

(c) The Secretary of Natural Resources shall not require a permit under 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 ~~July-January 1, 2027~~6 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 ~~July-January 1, 2027~~7, 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.

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

Formatted: Line spacing: Double

recommend how to reduce vulnerability to inundation flooding, including how and 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, and recommendations for a state minimum flood hazard area standard, which must meet or exceed the National Flood Insurance Program minimum standards.

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

(4) two members of Vermont's Regional Planning Commissions, who shall be 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 who 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) assess the feasibility of creating a state flood hazard area minimum standard;

(5) an estimate of the staffing needs to effectively administer the National Flood Insurance Program for Vermont's municipalities; and

(6) a recommendation for how to phase in a proposed state-administered National Flood Insurance Program.

(7) 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 DEC Rivers Program needed to establish a flood hazard area permitting program and a permitting fee for applications to the DEC Rivers Program and other potential funding sources.

Formatted: Line spacing: Double

(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.

* * * Dam Safety * * *

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

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

§ 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. 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,~~

~~shall not be under the jurisdiction of the Public Utility Commission of~~
Environmental Conservation.

(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.~~

§ 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 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, 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;

(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. 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~~ Department may ~~employ~~ require an engineer to investigate the property, review the plans and specifications, and make such additional investigation as the ~~State agency~~ Department shall deem necessary, ~~and such~~. 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. The engineer shall report to the ~~State agency~~ his or her Department the engineer's findings in respect thereto and the Department shall approve or disapprove the findings.

§ 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 to the ~~agency having jurisdiction~~ Department that the project has been completed in conformance with the approved plans and specifications.

§ 1091. LIABILITY FOR DAM BREACH

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

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

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

§ 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 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 findings and recommendations at the hearing. After the hearing, if~~ If the agency 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~~ such 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 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 Department may take further enforcement action, including the levying of fines for noncompliance.

(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.

[suggestion from auditors report] 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 State agency having jurisdiction over a dam 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 (c) 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 ~~of~~ risk associated with ~~of~~ a dam ~~or portion of a dam~~ determined to be unsafe pursuant to section 1095 of this chapter.

(b) ~~At a minimum, to be eligible for a Dam Safety Loan, the dam shall meet all of the following conditions~~ 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) Dams The dam must be under the regulatory jurisdiction of the DEC Dam Safety Program, including dams owned by the State of Vermont., and.

(B) To be eligible, a dam must be in danger of imminent failure that would harm persons or property, require immediate risk reduction measures to protect persons or property downstream, or be a dam found to be unsafe or a menace to public safety under section 1095 of this title. 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.

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

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

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

(B) ~~To be eligible, a~~ 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 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 ~~of repair, rehabilitation, or removal~~, 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 floodplain and wetland restoration, water quality, aquatic organism passage, public recreation opportunities, 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 removal of a dam 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) the status of all loan repayments, including all outstanding loans, dam and project name, the party responsible for repayment, terms of the loans, status of repayment, and whether all or part of the loan was forgiven or subsidized. a projection of loan repayment income to the fund.

(2) The Department shall post reports made under this subsection to its website in 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;

(6) requirements for access to financing and subsidy from the Dam Safety Revolving Loan Fund; and

(7) requirements and criteria for an alternative analysis, including that it be conducted by an independent third party and is necessary for eligibility for nonemergency funding from the Unsafe Dam Fund.

§ 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.]

* * * Basin Planning * * *

Sec. 11. 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;

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

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

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

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

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

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

(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.

Sec. 12. DAM SAFETY DIVISION POSITIONS

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

* * * Effective Date * * *

Sec. 13. EFFECTIVE DATE

(a) This act shall take effect on July 1, 2024.

(b) Sec 10 (jurisdictional transfer) the Agency shall publish a schedule by January 1, 2025, for jurisdictional transfer from PUC to ANR based on the presumed hazard classification of each dam.

(1) By July 1, 2025, the Agency shall assume jurisdiction over dams with a high hazard classification.

(2) By July 1, 2028, the Agency shall assume jurisdiction over all other dams.

(c) Sec 10 (Dam Safety Revolving Loan Fund).

(1) Funding shall be available for emergency use upon effective date of this Act

(2) Funding shall be available for nonemergency use upon the completion of rulemaking in (d) of this Section.

(d) Sec 10 (rulemaking) §1110 rulemaking for (6) and (7) shall be completed on July 1, 2027.

(e) Sec 11 (basin planning) shall be effective for updated Tactical Basin Plans that commence on or after January 1, 2025.

(Committee vote: _____)

Senator _____

FOR THE COMMITTEE