

1 H.590

2 Introduced by Representative Deen of Westminster

3 Referred to Committee on

4 Date:

5 Subject: Conservation and development; dams; safety inspection

6 Statement of purpose of bill as introduced: The bill would require the owners  
7 of dams in the State annually to register the dam with the Department of  
8 Environmental Conservation. The bill would also establish a process by the  
9 Department of Environmental Conservation may designate a dam over which it  
10 has jurisdiction as abandoned and attach a lien on the property on which the  
11 abandoned dam is located. In addition, the bill would require the seller of  
12 property on which a dam is located to notify the buyer of the presence and  
13 safety condition of the dam. The bill also requires the buyer of property on  
14 which a dam is located to notify the Department of the buyer's name and  
15 contact information.

16 An act relating to the safety and regulation of dams

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

1                                   \* \* \* Registration and Inspection of Dams \* \* \*

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

3   CHAPTER 43. DAMS

4       § 1080. DEFINITIONS

5           As used in this chapter:

6           (1) "Department" means the ~~department of environmental conservation~~  
7       Department of Environmental Conservation.

8           (2) "Person" means any individual; partnership; company; corporation;  
9       association; joint venture; trust; municipality; the ~~state~~ State of Vermont or any  
10      agency, department, or subdivision of the ~~state~~ State, any federal agency, or  
11      any other legal or commercial entity.

12          (3) "Person in interest" means, in relation to any dam, a person who has  
13      riparian rights affected by that dam, a substantial interest in economic or  
14      recreational activity affected by the dam, or whose safety would be endangered  
15      by a failure of the dam.

16          (4) "Engineer" means a professional engineer registered under Title 26  
17      who has experience in the design and investigation of dams.

18          (5) "Time" shall be reckoned in the manner prescribed by 1 V.S.A.

19      § 138.

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

4           (7) “Dam” means any artificial barrier, impoundment, or structure and  
5 its appurtenant works that are, were, or will be capable of impounding more  
6 than 500,000 cubic feet of water or other liquid after construction or alteration.

7           (8) “High hazard dam” means a dam located where structural failure  
8 likely will cause loss of life and serious damage to homes, industrial facilities,  
9 commercial facilities, public utilities, highways, or roads.

10           (9) “Low hazard dam” means a dam located where structural failure will  
11 cause minimal property damage and loss of life is not expected.

12           (10) “Significant hazard dam” means a dam located where structural  
13 failure may cause loss of life and damage to homes, industrial facilities,  
14 commercial facilities, secondary highways, or railroads or may cause  
15 interruption of use of service of relatively important facilities.

16 § 1081. JURISDICTION OF DEPARTMENT AND PUBLIC SERVICE

17           BOARD

18           (a) Unless otherwise provided, the powers and duties authorized by this  
19 chapter shall be exercised by the ~~department, except that the public service~~  
20 ~~board~~ Department, except that the Public Service Board shall exercise those  
21 powers and duties over dams and projects that relate to or are incident to the

1 generation of electric energy for public use or as a part of a public utility  
2 system.

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

14 (c) Upon transfer of jurisdiction as set forth above and upon written  
15 request, the state agency having former jurisdiction shall transfer copies of all  
16 records pertaining to the dam to the agency acquiring jurisdiction.

17 § 1082. AUTHORIZATION

18 (a) No person shall construct, enlarge, raise, lower, remodel, reconstruct, or  
19 otherwise alter any dam; or the natural outlet of a pond or impoundment or  
20 ~~other structure which is or will be capable of impounding more than 500,000~~  
21 ~~cubic feet of water or other liquid after construction or alteration, with a~~

1 volume exceeding 500,000 cubic feet or remove, breach, or otherwise lessen  
2 the capacity of an existing dam ~~that is or was capable of impounding more than~~  
3 ~~500,000 cubic feet~~ within or along the borders of this ~~state~~ State where land in  
4 this ~~state~~ State is proposed to be overflowed, or at the outlet of any body of  
5 water within this ~~state~~ State, unless authorized by the ~~state agency having~~  
6 ~~jurisdiction so to do~~ Department or the Public Service Board. However, in the  
7 matter of flood control projects where cooperation with the federal government  
8 is provided for by the provisions of section 1100 of this title, that section shall  
9 control.

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

14 § 1083. APPLICATION

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

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

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

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

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

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

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

14 § 1083a. ~~AGRICULTURAL DAMS~~

15 ~~(a) Notwithstanding the provisions of sections 1082, 1083, 1084, and 1086~~  
16 ~~of this title, the owners of an agricultural enterprise who propose, as an integral~~  
17 ~~and exclusive part of the enterprise, to construct or alter any dam, pond or~~  
18 ~~impoundment or other structure requiring a permit under section 1083 shall~~  
19 ~~apply to the natural resources conservation district in which his land is located.~~  
20 ~~The natural resources conservation districts created under the provisions of~~  
21 ~~chapter 31 of this title shall be the state agency having jurisdiction and shall~~

1 ~~review and approve the applications in the same manner as would the~~  
2 ~~department. The districts may request the assistance of the department for any~~  
3 ~~investigatory work necessary for a determination of public good and for any~~  
4 ~~review of plans and specifications as provided in section 1086.~~

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

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

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

20 (e) ~~Notwithstanding the provisions of chapter 7 of Title 3, the attorney~~  
21 ~~general shall counsel the districts in any case where a suit has been instituted~~

1 ~~against the districts for any decision made under the provisions of this chapter.~~

2 [Repealed.]

3 § 1084. DEPARTMENT OF FISH AND WILDLIFE; INVESTIGATION

4 The ~~commissioner of fish and wildlife~~ Commissioner of Fish and Wildlife  
5 shall investigate the potential effects on fish and wildlife habitats of any  
6 proposal subject to section 1082 of this title and shall certify the results to the  
7 ~~state agency having jurisdiction~~ Department or the Public Service Board prior  
8 to any hearing or meeting relating to the determination of public good and  
9 public safety.

10 § 1085. NOTICE OF APPLICATION

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

14 (1) ~~For any project subject to its jurisdiction under this chapter, on~~ On  
15 the petition of 25 or more persons, the ~~department~~ Department or the Public  
16 Service Board shall, or on its own motion it may, hold a public information  
17 meeting in a municipality in the vicinity of the proposed project to hear  
18 comments on whether the proposed project serves the public good and  
19 provides adequately for the public safety. Public notice shall be given by  
20 posting in the municipal offices of the towns in which the project will be



1 completed and by publishing in a local newspaper at least 10 days before the  
2 meeting.

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

13 § 1086. DETERMINATION OF PUBLIC GOOD; CERTIFICATES

14 (a) “Public good” means the greatest benefit of the people of the State. In  
15 determining whether the public good is served, the ~~state agency having~~  
16 ~~jurisdiction~~ Department or the Public Service Board shall give due  
17 consideration to, among other things, ~~to~~ the effect the proposed project will  
18 have on:

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

- 1 (2) scenic and recreational values;
- 2 (3) fish and wildlife;
- 3 (4) forests and forest programs;
- 4 (5) the need for a minimum water discharge flow rate schedule to
- 5 protect the natural rate of flow and the water quality of the affected waters;
- 6 (6) the existing uses of the waters by the public for boating, fishing,
- 7 swimming, and other recreational uses;
- 8 (7) the creation of any hazard to navigation, fishing, swimming, or other
- 9 public uses;
- 10 (8) the need for cutting clean and removal of all timber or tree growth
- 11 from all or part of the flowage area;
- 12 (9) the creation of any public benefits;
- 13 (10) consistency with the Vermont water quality standards and the
- 14 classification, if any, of the affected waters under chapter 47 of this title;
- 15 (11) any applicable ~~state~~ State, regional or municipal plans;
- 16 (12) municipal grand lists and revenues;
- 17 (13) public safety; and
- 18 (14) in the case of proposed removal of a dam that formerly related to or
- 19 was incident to the generation of electric energy, but which was not subject to
- 20 a memorandum of understanding dated prior to January 1, 2006 relating to its
- 21 removal, the potential for and value of future power production.

1           (b) If the ~~state agency having jurisdiction~~ Department or the Public Service  
2 Board finds that the proposed project will serve the public good, and, in case of  
3 any waters designated by the Secretary as outstanding resource waters, will  
4 preserve or enhance the values and activities sought to be protected by  
5 designation, the ~~agency~~ Department or the Public Service Board shall issue its  
6 order approving the application. The order shall include conditions for  
7 minimum stream flow to protect fish and instream aquatic life, as determined  
8 by the Agency of Natural Resources, and such other conditions as the ~~agency~~  
9 ~~having jurisdiction~~ Department or the Public Service Board considers  
10 necessary to protect any element of the public good listed above. Otherwise it  
11 shall issue its order disapproving the application.

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

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

1 § 1087. REVIEW OF PLANS AND SPECIFICATIONS

2 Upon receipt of an application, the ~~state agency having jurisdiction~~  
3 Department or the Public Service Board shall employ a registered engineer  
4 experienced in the design and investigation of dams to investigate the property,  
5 review the plans and specifications, and make additional investigations as it  
6 considers necessary to ensure that the project adequately provides for the  
7 public safety. The engineer shall report his or her findings to the ~~agency~~  
8 Department or the Public Service Board.

9 § 1089. EMPLOYMENT OF HYDRAULIC ENGINEER

10 With the approval of the ~~governor~~ Governor, the ~~state agency having~~  
11 ~~jurisdiction~~ Department or the Public Service Board may employ a competent  
12 hydraulic engineer to investigate the property, review the plans and  
13 specifications, and make such additional investigation as ~~such agency the~~  
14 Department or the Public Service Board shall deem necessary, and such  
15 engineer shall report to the ~~agency~~ Department or the Public Service Board his  
16 or her findings in respect thereto.

17 § 1090. CONSTRUCTION SUPERVISION

18 The construction, alteration, or other action authorized in section 1086 of  
19 this title shall be supervised by a registered engineer employed by the  
20 applicant. Upon completion of the authorized project, the engineer shall  
21 certify to the ~~agency having jurisdiction~~ Department or the Public Service

1 Board that the project has been completed in conformance with the approved  
2 plans and specifications.

3 § 1095. UNSAFE DAM; PETITION; HEARING; EMERGENCY

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

17 (b) If, upon the expiration of such date as may be ordered, the owner of  
18 such dam has not complied with the order directing the reconstruction, repair,  
19 breaching, removal, draining, or other action of such unsafe dam, the ~~state~~  
20 ~~agency having jurisdiction~~ Department or the Public Service Board may  
21 petition the ~~superior court~~ Superior Court in the county in which the dam is

1 located to enforce its order or exercise the right of eminent domain to acquire  
2 such rights as may be necessary to effectuate a remedy as the public safety or  
3 public good may require. If the order has been appealed, the ~~court~~ Court may  
4 prohibit the exercise pending disposition of the appeal.

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

10 \* \* \*

11 § 1098. REMOVAL OF OBSTRUCTIONS; APPROPRIATION

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

18 § 1099. APPEALS

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

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

4 \* \* \*

5 § 1104. DAM REGISTRATION

6 (a) Application of section. The requirements of this section shall apply to  
7 all dams in the State within the jurisdiction of the Department, regardless of  
8 whether the dam is permitted or approved under this chapter. The rules of the  
9 Public Service Board shall control the regulation and inspection of dams and  
10 projects over which the Public Service Board has jurisdiction.

11 (b) Dam registration. On or before January 1, 2015 and annually  
12 thereafter, the owner of property on which a dam is located shall, on a form  
13 provided by the Department, register the dam with the Department.

14 (c) Content of dam registration form. The dam registration form shall  
15 include:

16 (1) the name, mailing address, and telephone number of the owner of the  
17 real property on which the dam is located;

18 (2) the location of the dam;

19 (3) the dimensions of the dam;

20 (4) the classification of the dam, including whether it is a:

21 (A) high hazard dam;

1           (B) significant hazard dam;

2           (C) low hazard dam; or

3           (D) unknown hazard dam due to lack of information regarding

4 the dam; and

5           (5) any other information that the Department may require.

6           (d) Department identification of dam. The Department shall post the  
7 location and hazard potential classification of every dam in the State on the  
8 Department website.

9           (e) Failure to submit registration. If the Department identifies the owner of  
10 an unregistered dam, the Department shall notify the owner of the requirement  
11 to register the dam under this section. The owner of a dam who receives notice  
12 of required registration under this subsection shall have 60 days from the date  
13 of the Department's notice to submit a complete dam registration form to the  
14 Department.

15           (f) Registration fees. A person registering a dam under this section shall  
16 pay to the Department an annual registration fee. The annual fee shall be  
17 based on the hazard classification of the dam as follows:

18           (1) Low hazard dam = \$400.00;

19           (2) Unknown hazard dam = \$600.00

20           (3) Significant hazard dam = \$750.00; and

21           (4) High hazard dam = \$1,500.00.



1       (g) Dam safety inspection. Fees collected under subsection (f) of this  
2       section shall be deposited into the Environmental Permit Fund under 3 V.S.A.  
3       § 2805 and shall be used to implement the requirements of this chapter.

4       (h) Designation of dam as abandoned. If an owner of a dam classified as  
5       an unknown hazard fails to submit to the Department the dam registration form  
6       required by this section, the dam may be designated an abandoned dam subject  
7       to the provisions of section 1104a of this title.

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

13       § 1104a. ABANDONED DAMS

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

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

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

20               (3) publishes notice of a pending determination of abandonment of the  
21       dam in a newspaper of general circulation in the county in which the dam is

1 located; and after 45 days from the date of publication of pending  
2 determination of abandonment, no person has asserted ownership or control of  
3 the dam.

4 (b) Inspection of abandoned dam. Upon designation of a dam as  
5 abandoned, the Department shall conduct an inspection of the dam to  
6 determine:

7 (1) the present condition, safety, and adequacy of the dam; and

8 (2) whether the dam poses a potential or actual threat to life and  
9 property.

10 (c) Lien on property on which dam is situated. When the Department takes  
11 action under this section to inspect an abandoned dam or when the Department  
12 takes any action under this chapter to alleviate or address a risk to life or  
13 property from an abandoned dam, a lien shall be created on the property on  
14 which the dam is located and on the buildings and structures located on that  
15 property in order to secure repayment of the costs to the State of inspection or  
16 other action.

17 (d) Assumption of ownership of an abandoned dam. A person may assume  
18 ownership of a dam designated by the Department as abandoned by:

19 (1) notifying the Department, where applicable, of the intent to assume  
20 ownership;

1           (2) submission of the dam registration form required under section 1104  
2 of this title;

3           (3) payment of costs or liabilities due the Department; and

4           (4) submission of indicia of ownership of the dam and appurtenant  
5 property.

6       Sec. 2. DAM SAFETY ENGINEER

7           The Secretary of Natural Resources shall use funds collected under  
8 10 V.S.A. § 1104 to hire an additional dam safety engineer or other  
9 administrative support necessary for implementation of the requirements of  
10 10 V.S.A. chapter 43.

11                           \* \* \* Disclosure of Dam at Conveyance \* \* \*

12       Sec. 3. 27 V.S.A. § 617 is added to read:

13       § 617. DISCLOSURE OF DAM ON PROPERTY AT CONVEYANCE

14           (a) Definitions. As used in this section, “dam” shall have the same  
15 meaning as provided for in 10 V.S.A. § 1080(7).

16           (b) Seller; disclosure of dam on property. A seller of real property on  
17 which a dam is located shall:

18                   (1) prior to the execution of a contract for the conveyance of real  
19 property:

20                           (A) disclose to the buyer the presence and location of the dam on the  
21 property; and

1           (B) provide the buyer with an inspection report for the dam that is  
2           completed by an independent registered engineer experienced in the design and  
3           investigation of dams; and

4           (2) submit to the Department a notice of property transfer of the dam no  
5           later than 15 days from execution of the contract for the conveyance of the real  
6           property.

7           (c) Buyer; registration with Department. No later than 15 days from  
8           execution of a contract for the conveyance of real property on which a dam is  
9           located, the buyer of the real property shall, on a form provided by the  
10          Department, notify the Department and the municipality or municipalities in  
11          which the dam is located of the property transfer. The notification form shall  
12          include:

13           (1) a copy of the current dam safety inspection report provided by the  
14           seller prior to execution of the contract for the conveyance; and

15           (2) the name, mailing address, and telephone number of the buyer.

16          (d) Marketability of title. Noncompliance with the requirements of this  
17          section shall not affect the marketability of title of a property.

18          (e) Penalty; liability. Liability for failure to provide the informational  
19          materials required by this section shall be limited to a civil penalty, imposed by  
20          the Agency of Natural Resources under 10 V.S.A. chapter 201, of no less than  
21          \$100.00 and no more than \$250.00 for each violation.

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

2 Sec. 4. EFFECTIVE DATE

3 This act shall take effect on July 1, 2014.