

House Calendar

Tuesday, February 25, 2014

50th DAY OF THE ADJOURNED SESSION

House Convenes at 10:00 A.M.

TABLE OF CONTENTS

Page No.

ACTION CALENDAR

Favorable with Amendment

H. 69 Licensed alcohol and drug abuse counselors as participating providers in Medicaid	678
Rep. Pugh for Human Services	
H. 275 Professional licensing of members of the Armed Forces	678
Rep. Vowinkel for General, Housing and Military Affairs	
H. 589 Hunting, fishing, and trapping	680
Rep. Huntley for Fish, Wildlife and Water Resources	
Rep. Helm for Appropriations	689

NOTICE CALENDAR

Committee Bill for Second Reading

H. 863 A Public Records Act exemption for the identity of whistleblowers	689
Rep. Cole for Government Operations	

Favorable with Amendment

H. 590 The safety and regulation of dams	689
Rep. McCullough for Fish, Wildlife and Water Resources	

Favorable

S. 317 An act relating to repealing the unconstitutional Vermont statutes related to the performance of abortions	701
Rep. Grad for Judiciary	

ORDERS OF THE DAY

ACTION CALENDAR

Favorable with Amendment

H. 69

An act relating to licensed alcohol and drug abuse counselors as participating providers in Medicaid

Rep. Pugh of South Burlington, for the Committee on **Human Services**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 33 V.S.A. § 813 is added to read:

§ 813. MEDICAID PARTICIPATING PROVIDERS

The Department of Vermont Health Access shall grant authorization to a licensed alcohol and drug abuse counselor to participate as a Medicaid provider to deliver clinical and case coordination services to Medicaid beneficiaries, regardless of whether the counselor is a preferred provider.

Sec. 2. EFFECTIVE DATE

This act shall take effect on October 1, 2014.

(**Committee Vote: 10-0-1**)

H. 275

An act relating to professional licensing of members of the Armed Forces

Rep. Vowinkel of Hartford, for the Committee on **General, Housing and Military Affairs**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 21 V.S.A. § 1325 is amended to read:

§ 1325. EMPLOYERS' EXPERIENCE-RATING RECORDS;

DISCLOSURE TO SUCCESSOR ENTITY

(a)(1) The Commissioner shall maintain an experience-rating record for each employer. Benefits paid shall be charged against the experience-rating record of each subject employer who provided base-period wages to the eligible individual. Each subject employer's experience-rating charge shall bear the same ratio to total benefits paid as the total base-period wages paid by that employer bear to the total base-period wages paid to the individual by all base-period employers. The experience-rating record of an individual subject

base-period employer shall not be charged for benefits paid to an individual under any of the following conditions:

* * *

(F) The individual voluntarily separated from that employer to accompany a spouse who is on active duty with the U.S. Armed Forces as provided by section 1344(a)(2)(A) of this chapter.

* * *

Sec. 2. 21 V.S.A. § 1344 is amended to read:

§ 1344. DISQUALIFICATIONS

(a) An individual shall be disqualified for benefits:

* * *

(2) For any week benefits are claimed, except as provided in subdivision (a)(3) of this section, until he or she has presented evidence to the satisfaction of the Commissioner that he or she has performed services in employment for a bona fide employer and has had earnings in excess of six times his or her weekly benefit amount if the Commissioner finds that such individual is unemployed because:

(A) He or she has left the employ of his or her last employing unit voluntarily without good cause attributable to such employing unit. An individual shall not suffer more than one disqualification by reason of such separation. However, an individual shall not be disqualified for benefits if the individual left such employment to accompany a spouse who is on active duty with the U.S. Armed Forces and is required to relocate by the U.S. Armed Forces due to permanent change of station orders, activation orders, or unit deployment orders, and when such relocation would make it impractical or impossible, as determined by the Commissioner, for the individual to continue working for such employment unit.

* * *

Sec. 3. EFFECTIVE DATE

This act shall take effect on July 1, 2014.

and that after passage the title of the bill be amended to read: "An act relating to unemployment insurance benefits for military spouses".

(Committee Vote: 8-0-0)

H. 589

An act relating to hunting, fishing, and trapping

Rep. Huntley of Cavendish, for the Committee on **Fish, Wildlife & Water Resources**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

* * * Transport, Possession, or Fencing of Nonnative or
Native Species * * *

Sec. 1. 10 V.S.A. § 4001 is amended to read:

§ 4001. DEFINITIONS

Words and phrases used in this part, unless otherwise provided, shall be construed to mean as follows:

* * *

(38) Captive hunt facility: any enclosure created by the use of fences, man-made structures, or natural barriers where animals are confined for the purpose of taking or attempting to take an animal by hunting. Captive hunt facility shall not mean activities covered by the Commissioner of Fish and Wildlife's rules for the training of dogs or for the regulation of regulated shooting grounds.

(39) Enclosure: means a structure designed to restrict the free movement of animals and the area within that structure.

Sec. 2. 10 V.S.A. § 4253 is amended to read:

§ 4253. LANDOWNER; FAMILY; EXCEPTION

(a) A resident owner of lands, his or her spouse, and their minor children may, without procuring a license under this chapter, take fish from the waters therein, shoot pickerel, and take wild animals or wild birds therein subject to the provisions of this part.

(b) A nonresident owner of lands, his or her spouse, and their minor children, may without procuring a license under this chapter, take fish from the waters therein, shoot pickerel, and take wild animals or wild birds thereon subject to the provisions of this part, except if the lands are posted under provisions other than section 4710 of this title.

(c) As used in this section, "post" means any signage that would lead a reasonable person to believe that hunting is prohibited on the land.

(d) Nothing in this section shall be construed to:

(1) exempt a captive hunt facility from the permitting requirements adopted under the rules of the Fish and Wildlife Board; or

(2) without a permit from the Commissioner of Fish and Wildlife, allow any person, including a hunt club, hunting association, or multiple landowners, to transport, possess, or fence any animal for the purpose of taking or attempting to take the animal by hunting.

* * * Hunting or Fishing License For Disabled Veterans * * *

Sec. 3. 10 V.S.A. § 4255(c) is amended to read:

(c) A permanent or free license may be secured on application to the ~~department~~ Department by a person qualifying as follows:

* * *

(4) A Vermont resident who is a veteran of the ~~armed forces of the United States~~ U.S. Armed Forces and who is, or ever has been, ~~100~~ 60 percent disabled as a result of a service-connected disability may receive a free fishing, hunting, or combination hunting and fishing license which shall include all big game licenses, except for a moose license, upon presentation of a certificate issued by the veterans' administration so certifying. A resident of a state which provides a reciprocal privilege for Vermont veterans and who would qualify for a free license under this subdivision if the person were a Vermont resident, may receive a free one-year fishing, hunting, or combination hunting and fishing license.

* * *

* * * Fish and Wildlife Board Rules; Migratory Game Birds * * *

Sec. 4. 10 V.S.A. § 4082 is amended to read:

§ 4082. VERMONT FISH AND WILDLIFE REGULATIONS

(a) The Board may adopt rules, under 3 V.S.A. chapter 25, to be known as the "Vermont Fish and Wildlife Regulations" for the regulation of fish and wild game and the taking thereof except as otherwise specifically provided by law. The rules shall be designed to maintain the best health, population, and utilization levels of the regulated species and of other necessary or desirable species which are ecologically related to the regulated species. The rules shall be supported by investigation and research conducted by the Department on behalf of the Board.

(b)(1) ~~The~~ Except as provided for under subdivision (2) of this subsection, the Board annually may adopt rules relating to the management of ~~migrating~~ migratory game birds, and shall follow the procedures for rulemaking contained in 3 V.S.A. chapter 25. For each such rule, the Board shall conduct

a hearing but, when necessary, may schedule the hearing for a day before the terms of the rule are expected to be determined.

(2) Beginning with the 2015 hunting season, the Board may set by procedure the daily bag and possession limits of migratory game birds that may be harvested in each Waterfowl Hunting Zone annually without following the procedures for rulemaking contained in 3 V.S.A. chapter 25. The annual daily bag and possession limits of migratory game birds shall be consistent with federal requirements. Prior to setting the migratory game bird daily bag and possession limits, the Board shall provide a period of not less than 30 days of public notice and shall conduct at least two public informational hearings. The final migratory game bird daily bag and possession limits shall be enforceable by the Department under its enforcement authority in part 4 of this title. Annually, on or before January 15, the Department shall submit the final migratory game bird daily bag and possession limits to the House Committee on Fish, Wildlife and Water Resources and the Senate Committee on Natural Resources and Energy.

(c) The Board may set by procedure the annual number of antlerless deer that can be harvested in each wildlife management unit and the annual number of moose that can be harvested in each wildlife management unit without following the procedures for rulemaking contained in 3 V.S.A. chapter 25. The annual numbers of antlerless deer and moose that can be harvested shall be supported by investigation and research conducted by the Department on behalf of the Board. Prior to setting the antlerless deer and moose permit numbers, the Board shall provide a period of not less than 30 days of public notice and shall conduct at least three public informational hearings. The public informational hearings may be conducted simultaneously with the regional antlerless deer meetings required by 10 V.S.A. App. § 2b. The final annual antlerless deer and moose harvest permit numbers shall be enforceable by the Department under its enforcement authority in part 4 of this title. The final annual antlerless deer and moose harvest permit numbers shall be reported to the House Committee on Fish, Wildlife and Water Resources and the Senate Committee on Natural Resources and Energy as part of the annual deer report required under section 4084 of this title.

* * * Fish and Wildlife Board Rules; Deer Season * * *

Sec. 5. 10 V.S.A. § 4084 is amended to read:

§ 4084. GAME

(a) Rules concerning wild game may:

(1) establish open seasons; however, rules regarding taking of deer adopted under this subdivision shall make provision for a regular rifle hunting

season pursuant to ~~section 4741 of this title and~~, for an archery season, and a muzzle loader season unless there is a scientific reason not to do so;

- (2) establish daily, season, and possession limits;
- (3) establish territorial limits for any rule under this subchapter;
- (4) prescribe the manner and means of taking any species or variety, and including reporting and tagging of game;
- (5) establish restrictions on taking based upon sex, maturity, or other physical distinction of the species or variety pursued; and
- (6) designate wildlife management units for various species or varieties.

(b)(1) On or before July 1 of each year, the Commissioner shall publish a report showing all the wildlife management units and proposed deer seasons. The reports shall include supporting data for the proposed actions.

(2) Each January, the Commissioner shall publish an annual deer report.

(c) The Board may alter the outer boundary of a wildlife management unit no more frequently than every ten years without approval of the General Assembly; however, the Board shall have authority to subdivide established wildlife management units.

(d), (e) [Repealed.]

Sec. 6. 10 V.S.A. § 4741 is amended to read:

§ 4741. ~~REGULAR DEER SEASON~~

~~For the 16 consecutive calendar days commencing 12 days prior to Thanksgiving day, a person may take by lawful means one wild deer as prescribed by the Vermont fish and wildlife regulations. [Repealed.]~~

Sec. 7. 10 V.S.A. § 4742a is amended to read:

§ 4742a. YOUTH DEER HUNTING WEEKEND

(a) The Saturday and Sunday prior to opening day of the regular deer season established by Board rule shall be youth deer hunting weekend.

(b) A person who is ~~age~~ 15 ~~and~~ years of age or under on the weekend of the hunt, who has successfully completed a hunter safety course, may take one wild deer during youth deer hunting weekend in accordance with the rules of the ~~board~~ Board. In order to hunt under this section, a young person shall also hold a valid hunting license under section 4255 of this title, hold a youth deer hunting tag, and be accompanied by an unarmed adult who holds a valid Vermont hunting license and who is over 18 years of age. An adult

accompanying a youth under this section shall accompany no more than two young people at one time.

(c) Each year, the ~~board~~ Board shall determine whether antlerless deer may be taken under this section in any deer management unit or units. A determination under this subsection shall be made by rule, shall be based on the game management study conducted pursuant to section 4081 of this title, and, notwithstanding subsection (g) of that section, may allow taking of antlerless deer.

(d) No person shall hunt under this section on privately owned land without first obtaining the permission of the owner or occupant.

(e) Before the first youth deer hunting weekend and after each fall hunting season, the ~~department~~ Department shall collect information on youth deer hunting weekend during the regional public hearings held pursuant to subsection 4081(f) of this title. Information relative to the public's knowledge and concerns about the deer herd shall be gathered. The ~~board~~ Board shall administer youth deer hunting weekend, by deer management unit, based on public input and scientific information.

(f) The scheduled amount of a fine under section 4555 of this title shall be doubled for a violation of this section, and the fine shall be assessed against the licensed adult who is accompanying the youth pursuant to subsection (b) of this section and who has the youth hunter in his or her charge.

(g) ~~For the purposes of~~ As used in this section, "accompany," "accompanied," or "accompanying" means direct control and supervision, including the ability to see and communicate with the youth hunter without the aid of artificial devices such as radios or binoculars, except for medically necessary devices such as hearing aids or eyeglasses. While hunting, an individual who holds a valid hunting license under subsection 4254(b) of this title shall accompany no more than two youth hunters at a time.

* * * Shooting From or Across Highway * * *

Sec. 8. 10 V.S.A. § 4705 is amended to read:

§ 4705. SHOOTING FROM MOTOR VEHICLES OR AIRCRAFT;
SHOOTING FROM OR ACROSS HIGHWAY; PERMIT

(a) A person shall not take, or attempt to take, a wild animal by shooting from a motor vehicle, motorboat, airplane, snowmobile, or other motor propelled craft or any vehicle drawn by a motor propelled vehicle except as permitted under subsection (e) of this section.

(b) A person shall not carry or possess while in or on a vehicle propelled by mechanical power or drawn by a vehicle propelled by mechanical power

within the right of way of a public highway a rifle or shotgun containing a loaded cartridge or shell in the chamber, mechanism, or in a magazine, or clip within a rifle or shotgun, or a muzzle-loading rifle or shotgun that has been charged with powder and projectile and the ignition system of which has been enabled by having an affixed or attached percussion cap, primer, battery, or priming powder, except as permitted under subsections (d) and (e) of this section. A person who possesses a rifle or shotgun in or on a vehicle propelled by mechanical power, or drawn by a vehicle propelled by mechanical power within a right of way of a public highway shall upon demand of an enforcement officer exhibit the firearm for examination to determine compliance with this section.

(c) A person while on or within 25 feet of the traveled portion of a public highway, except for public highways designated Class 4 on a town highway map, shall not take or attempt to take any wild animal by shooting a firearm, a muzzle loader, a bow and arrow, or a crossbow. A person shall not shoot a firearm, muzzle loader, a bow and arrow, or a crossbow over or across the traveled portion of a public highway.

(d) This section shall not restrict the possession or use of a loaded firearm by an enforcement officer in performance of his or her duty.

(e) ~~Subsection (a)~~ Subsections (a) and (c) of this section shall not apply to a licensed hunter who is a paraplegic or is certified by a physician to be unable to pursue game because of permanent severe physical disability, if he or she obtains a permit as provided in this subsection. The Commissioner on receipt of satisfactory proof of the disability of an applicant may issue a permit under this subsection. This permit shall be attached to the license, and shall remain in effect until the death of the holder, unless the Commissioner has reason to believe the permit is misused. The holder of the permit shall carry it at all times while hunting, and shall produce it on demand for inspection by any game warden or other law enforcement officer authorized to make arrests. The holder of the permit may take game from a vehicle or boat but only if it is stationary and ~~off~~ is not within 10 feet of the traveled portion of a public highway. In no event shall the holder of a permit shoot across the traveled portion of a public highway.

(f) The phrase “public highway,” as used in this section, means roads shown on the highway maps of the respective towns, made by the ~~agency of transportation~~ Agency of Transportation, but does not include foot trails or private roads.

* * * Conservation Motor Vehicle Registration Plates * * *

Sec. 9. 23 V.S.A. § 304b is amended to read:

§ 304b. CONSERVATION MOTOR VEHICLE REGISTRATION PLATES

(a) The Commissioner shall, upon application, issue conservation registration plates for use only on vehicles registered at the pleasure car rate, on trucks registered for less than 26,001 pounds, and on vehicles registered to State agencies under section 376 of this title, but excluding vehicles registered under the International Registration Plan. Plates so acquired shall be mounted on the front and rear of the vehicle. The Commissioner of Motor Vehicles and the Commissioner of Fish and Wildlife shall determine the graphic design of the special plates in a manner which serves to enhance the public awareness of the State's interest in restoring and protecting its wildlife and major watershed areas. The Commissioner of Motor Vehicles and the Commissioner of Fish and Wildlife may alter the graphic design of these special plates provided that plates in use at the time of a design alteration shall remain valid subject to the operator's payment of the annual registration fee. Applicants shall apply on forms prescribed by the Commissioner and shall pay an initial fee of \$23.00 in addition to the annual fee for registration. In following years, in addition to the annual registration fee, the holder of a conservation plate shall pay a renewal fee of \$23.00. The Commissioner may adopt rules under 3 V.S.A. chapter 25 to implement the provisions of this subsection.

(b) Initial fees collected under subsection (a) of this section shall be allocated as follows:

(1) \$11.00 to the Transportation Fund.

(2) \$6.00 to the Department of Fish and Wildlife for deposit into the Nongame Wildlife Account created in 10 V.S.A. § 4048.

(3) \$6.00 to the Department of Fish and Wildlife for deposit into the Watershed Management Account created in 10 V.S.A. § 4050.

(c) Renewal fees collected under subsection (a) of this section shall be allocated as follows:

(1) \$10.00 to the Department of Fish and Wildlife for deposit into the Nongame Wildlife Account created in 10 V.S.A. § 4048.

(2) \$10.00 to the Department of Fish and Wildlife for deposit into the Watershed Management Account created in 10 V.S.A. § 4050.

(3) \$3.00 to the Transportation Fund.

(d) The Commissioner of Fish and Wildlife is authorized to deposit fees collected under subsections (b) and (c) of this section into the Conservation Camp Fund when the fees collected exceed the annual funding needs of the Nongame Wildlife Account and the Watershed Management Account.

Sec. 10. PROPOSED NEW CONSERVATION MOTOR VEHICLE
REGISTRATION PLATES

On or before January 15, 2015, the Commissioner of Motor Vehicles and the Commissioner of Fish and Wildlife under the authority of 23 V.S.A. § 304b shall submit to the House Committee on Fish, Wildlife and Water Resources, the Senate Committee on Natural Resources and Energy, and the House and Senate Committees on Transportation at least three new graphic designs for proposed conservation registration plates.

* * * Cultural or Ceremonial Use of Migratory Bird Feathers * * *

Sec. 11. 10 V.S.A. § 4152 is amended to read:

§ 4152. PERMITS FOR SCIENTIFIC AND EDUCATIONAL
COLLECTIONS

(a) ~~The commissioner~~ Commissioner may issue permits to a properly accredited person or educational institution permitting the holder thereof to collect birds, their nests and eggs, and fish and wild animals or parts thereof, for public scientific research or educational purposes of the institution.

(b) ~~In addition, the commissioner~~ The Commissioner may issue a permit to an individual ~~which that~~ allows the holder to collect fish and wild animals for the purpose of using them as subjects of art or photography.

(c) The Commissioner may issue a permit to a person that allows the holder to collect and possess a dead salvage bird or bird feathers for noncommercial cultural or ceremonial purposes provided that the bird was legally acquired, transferred from an individual who acquired it legally, or found dead and the permittee had no part in the intentional killing of the bird. A permit issued under this section shall comply with federal requirements regarding collection and possession of migratory birds.

Sec. 12. 10 V.S.A. § 5408 is amended to read:

§ 5408. LIMITATIONS

(a) Notwithstanding any provision of this chapter, after obtaining the advice of the Endangered Species Committee, the Secretary may permit, under such terms and conditions as the Secretary may prescribe by rule, any act otherwise prohibited by this chapter if done for any of the following purposes: scientific purposes; to enhance the propagation or survival of a species; economic hardship; zoological exhibition; educational purposes; noncommercial cultural or ceremonial purposes; or special purposes consistent with the purposes of the federal Endangered Species Act.

* * *

Sec. 13. 10 V.S.A. App. § 10 is amended to read:

§ 10. VERMONT ENDANGERED AND THREATENED SPECIES RULE

* * *

4.0 Procedures

* * *

4.2 Permits per 10 V.S.A. § 5408(a) may be granted by the Secretary only if the taking of an endangered or threatened species is:

4.2.1 For scientific purposes, or

4.2.2 To enhance the propagation of species, or

4.2.3 To prevent or mitigate economic hardship, or

4.2.4 For zoological exhibition, or

4.2.5 For educational purposes, or

4.2.6 For noncommercial cultural or ceremonial purposes to a person for the collection and possession of a dead salvage bird or parts thereof, including bird feathers, provided that the permit issued complies with federal requirements regarding collection and possession of migratory birds and the bird was legally acquired, transferred from an individual who acquired it legally, or found dead and the permittee had no part in the intentional killing of the bird, or

4.2.7 For special purpose consistent with the purpose of the Federal Endangered Species Act (see 16 ~~USCA~~ U.S.C.A. § 1531(b)).

* * *

* * * State Fly-Fishing Fly * * *

Sec. 14. 1 V.S.A. § 517 is added to read:

§ 517. STATE FLY-FISHING FLY

The State Fly-Fishing Fly shall be the Governor Aiken bucktail streamer.

* * * Effective Dates * * *

Sec. 15. EFFECTIVE DATES

(a) This section and Secs. 1–2 (landowner exception; captive hunt; definitions), 3 (license for disabled veteran), and 8 (shooting from or across highway) shall take effect on passage.

(b) Secs. 4 (migrating game bird harvest numbers), 10 (conservation registration plates report), 11–13(cultural and ceremonial use of bird feathers), and 14 (State Fly-Fishing Fly) shall take effect on July 1, 2014.

(c) Secs. 5–7 (deer season rules) and 9 (conservation plates; proceeds) shall take effect on January 1, 2015.

(Committee Vote: 9-0-0)

Rep. Helm of Fair Haven, for the Committee on **Appropriations**, recommends the bill ought to pass when amended as recommended by the Committee on **Fish, Wildlife & Water Resources**.

(Committee Vote: 11-0-0)

NOTICE CALENDAR

Committee Bill for Second Reading

H. 863

An act relating to a Public Records Act exemption for the identity of whistleblowers.

(Rep. Cole of Burlington will speak for the Committee on **Government Operations**.)

Favorable with Amendment

H. 590

An act relating to the safety and regulation of dams

Rep. McCullough of Williston, for the Committee on **Fish, Wildlife & Water Resources**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

* * * Registration and Inspection of Dams * * *

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

CHAPTER 43. DAMS

§ 1080. DEFINITIONS

As used in this chapter:

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

(2) “Person” means any individual; partnership; company; corporation; association; joint venture; trust; municipality; the ~~state~~ State of Vermont or any

agency, department, or subdivision of the ~~state~~ State, any federal agency, or any other legal or commercial entity.

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

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

(5) "Time" shall be reckoned in the manner prescribed by 1 V.S.A. § 138.

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

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

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

(B) barriers, impoundments, or structures impounding water with one acre or less of surface area.

(8) "Pond" means a natural body of water with a volume exceeding 500,000 cubic feet.

§ 1081. JURISDICTION OF DEPARTMENT AND PUBLIC SERVICE

BOARD

(a) Unless otherwise provided, the powers and duties authorized by this chapter shall be exercised by the ~~department, except that the public service board~~ Department, except that the Public Service Board shall exercise those powers and duties over 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.

(b) Transfer of jurisdiction. Jurisdiction over a dam is transferred from the ~~department~~ Department to the ~~public service board~~ Public Service Board whenever the Federal Energy Regulatory Commission grants a license to generate electricity at the dam or whenever the ~~public service board~~ Public Service Board receives an application for a certificate of public good for electricity generation at that dam. Jurisdiction is transferred from the ~~public~~

~~service board~~ Public Service Board to the ~~department~~ Department whenever such a federal license expires or is otherwise lost, whenever such a certificate of public good is revoked or otherwise lost, or whenever the ~~public service board~~ Public Service Board denies an application for a certificate of public good.

(c) Upon transfer of jurisdiction as set forth above and upon written request, the state agency having former jurisdiction 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 dam, ~~or the natural outlet of a pond or impoundment or other structure which 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 dam that is or was capable of impounding more than 500,000 cubic feet within or along the borders of this ~~state~~ State where land in this ~~state~~ State is proposed to be overflowed, or at the outlet of any body of water within this ~~state~~ State, unless authorized by the ~~state agency having jurisdiction so to do~~ Department or the Public Service Board. 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 nonoverflow part of the structure.

§ 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 or the Public Service Board and shall give notice thereof to the governing body of the municipality or municipalities in which the dam or any part of the dam is to be located. 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 or the Public Service Board considers necessary to properly review the application.

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

§ 1083a. ~~AGRICULTURAL DAMS~~

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

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

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

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

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

~~against the districts for any decision made under the provisions of this chapter.~~
[Repealed.]

§ 1084. DEPARTMENT OF FISH AND WILDLIFE; INVESTIGATION

~~The commissioner of fish and wildlife~~ 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 or the Public Service Board 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 or the Public Service Board shall give notice to all persons interested.

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

~~(2) For any project subject to its jurisdiction under this chapter, the public service board 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 or the Public Service Board shall give due consideration to, among other things, ~~to~~ 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~~ long-range agricultural land use impacts;

(2) scenic and recreational values;

(3) fish and wildlife;

(4) forests and forest programs;

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

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

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

(12) municipal grand lists and revenues;

(13) public safety; and

(14) in the case of proposed removal of a dam that formerly related to or was incident to the generation of electric energy, but which 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 or the Public Service Board finds that the proposed project 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~~ Department or the Public Service Board shall issue its order approving the application. The order shall include conditions for minimum stream flow to protect fish and instream aquatic life, as determined by the Agency of Natural Resources, and such other conditions as the ~~agency having jurisdiction~~ Department or the Public Service Board considers necessary to protect any element of the public good listed above. Otherwise it shall issue its order disapproving the application.

(c) The ~~agency~~ Department or the Public Service Board shall provide the applicant and interested parties 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. [Repealed.]~~

§ 1087. REVIEW OF PLANS AND SPECIFICATIONS

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

§ 1089. EMPLOYMENT OF HYDRAULIC ENGINEER

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

§ 1090. CONSTRUCTION SUPERVISION

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

§ 1095. UNSAFE DAM; PETITION; HEARING; EMERGENCY

(a) On receipt of a petition signed by ~~not less~~ no fewer than ten persons in interest or the legislative body of a municipality, the ~~agency having jurisdiction~~ Department or the Public Service Board 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 dam or portion of a dam, of any size. The ~~agency~~ Department or the Public Service Board may fix a time and place for

hearing and shall give notice in the manner it directs to all parties interested. The engineer shall present his or her findings and recommendations at the hearing. After the hearing, if the ~~agency~~ Department or the Public Service Board finds that the 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 make the dam safe.

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

(c) If, upon completion of the investigation described in subsection (a) of this section, the ~~state agency having jurisdiction~~ Department or the Public Service Board 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 conduct the hearing described in subsection (a).

* * *

§ 1098. REMOVAL OF OBSTRUCTIONS; APPROPRIATION

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

§ 1099. APPEALS

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

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

* * *

§ 1104. DAM REGISTRATION

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

(b) Dam registration. On or before January 1, 2015 and annually thereafter, the owner of property on which a dam is located or the owner of the dam, if that person is not the owner of the property, shall, on a form provided by the Department, register the dam with the Department.

(c) Department identification of dam.

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

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

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

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

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

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

§ 1104a. ABANDONED DAMS

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

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

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

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

(b) Inspection of abandoned dam. Upon designation of a dam as abandoned, the Department shall conduct an inspection of the dam according to its inspection authority under section 1105 of this title.

(c) Lien on property on which dam is situated. When the Department takes action under this section to inspect an abandoned dam or when the Department takes any action under this chapter to alleviate or address a risk to life or property from an abandoned dam, the costs of the action shall be a lien in favor of the State on the property on which the dam is located and on the buildings and structures located on that property in order to secure repayment of the State of inspection or other action. The lien shall arise at the time demand is made by the Secretary and shall continue until the liability for such sum with interest and costs is satisfied or becomes unenforceable. A lien under this section shall be subordinate to a primary mortgage on the property. Notice of a lien under this section shall be recorded in the land records of the town in which the property is located.

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

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

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

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

(4) submission of indicia of ownership of the dam.

* * *

* * * Disclosure of Dam at Conveyance * * *

Sec. 2. 27 V.S.A. § 617 is added to read:

§ 617. DISCLOSURE OF DAM ON PROPERTY AT CONVEYANCE

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

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

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

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

(B) provide the buyer with an inspection report for the dam that accurately reflects the current condition of the dam by an independent licensed engineer experienced in the design and investigation of dams; and

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

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

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

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

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

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

* * * Dam Registration Fees * * *

Sec. 3. 3 V.S.A. § 2805 is amended to read:

§ 2805. ENVIRONMENTAL PERMIT FUND

(a) There is hereby established a special fund to be known as the Environmental Permit Fund. Within the Fund, there shall be two accounts: the Environmental Permit Account and the Air Pollution Control Account. Unless otherwise specified, fees collected in accordance with subsections 2822(i) and (j) of this title, and 10 V.S.A. § 2625 and gifts and appropriations shall be deposited in the Environmental Permit Account. Fees collected in accordance with subsections 2822(j)(1), (k), (l), and (m) of this title shall be deposited in the Air Pollution Control Account. The Environmental Permit Fund shall be used to implement the programs specified under section 2822 of this title. The Secretary of Natural Resources shall be responsible for the fund and shall account for the revenues and expenditures of the Agency of Natural Resources. The Environmental Permit Fund shall be subject to the provisions of 32 V.S.A. chapter 7, subchapter 5. The Environmental Permit Fund shall be used to cover a portion of the costs of administering the Environmental Division established under 4 V.S.A. chapter 27. The amount of \$143,000.00 per fiscal year shall be disbursed for this purpose.

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

(c) Any fee required to be collected under subdivision 2822(j)(12) of this title for dam registrations shall be used solely to cover all direct or indirect costs required to support the programs authorized under 10 V.S.A. chapter 43. When the fees collected under subdivision 2822(j)(12) of this title exceed the annual funding needs of 10 V.S.A. chapter 43, the excess funds shall be deposited into the Unsafe Dam Revolving Loan Fund under 10 V.S.A. § 1106.

Sec. 4. 3 V.S.A. § 2822(j)(12) is amended to read:

(12)(A) For dam permits issued under 10 V.S.A. chapter 43: 0.525 percent of construction costs, minimum fee of \$200.00.

(B) For dam registration forms submitted under 10 V.S.A. chapter 43, a person registering a dam shall pay an annual registration fee. The annual fee shall be based on the hazard classification of the dam as follows:

- (i) Low hazard dam \$200.00;
- (ii) Unknown hazard dam \$200.00;
- (iii) Significant hazard dam \$350.00; and
- (iv) High hazard dam \$1,000.00.

* * * Dam Registration Report * * *

Sec. 5. 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 and the Senate Committee on Natural Resources and Energy. 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 summary of the dams registered under the program, organized by amount of water impounded; and

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

* * * Effective Date * * *

Sec. 6. EFFECTIVE DATE

This act shall take effect on July 1, 2014.

(Committee Vote: 7-0-2)

Favorable

S. 317

An act relating to repealing the unconstitutional Vermont statutes related to the performance of abortions

Rep. Grad of Moretown, for the Committee on **Judiciary**, recommends that the bill ought to pass in concurrence.

(Committee Vote: 9-0-2)

(No Senate Amendment)

Information Notice

Deadline for Introducing Bills

Pursuant to Rule 40(c) during the second year of the biennium, except with

the prior consent of the Committee on Rules, no committee, except the Committees on Appropriations, Ways and Means or Government Operations, may introduce a bill drafted in standard form after the last day of March (March 31, 2014). The Committees on Appropriations and Ways and Means bill may be drafted in standard form at any time, and Government Operations bills pertaining to city or town charters, may be drafted in standard form at any time.

If you are planning on a resolution for presentation at your Town Meeting, please see Michael Chernick with your information by February 14th or sooner, if possible. This will allow sufficient time for processing and passage by both bodies.