

1 TO THE HONORABLE SENATE:

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

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

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

9 CHAPTER 43. DAMS

10 § 1080. DEFINITIONS

11 As used in this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 § 1082. AUTHORIZATION

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

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

1 § 1083. APPLICATION

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

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

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

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

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

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

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

1 § 1083a. ~~AGRICULTURAL DAMS~~

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

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

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

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

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

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

10 [Repealed.]

11 § 1084. DEPARTMENT OF FISH AND WILDLIFE; INVESTIGATION

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

18 § 1085. NOTICE OF APPLICATION

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

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

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

1 § 1086. DETERMINATION OF PUBLIC GOOD; CERTIFICATES

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

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

10 (2) scenic and recreational values;

11 (3) fish and wildlife;

12 (4) forests and forest programs;

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

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

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

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

21 (9) the creation of any public benefits;

- 1 (10) consistency with the Vermont water quality standards and the
2 classification, ~~if any,~~ of the affected waters under chapter 47 of this title;
- 3 (11) any applicable ~~state~~ State, regional, or municipal plans;
- 4 (12) municipal grand lists and revenues;
- 5 (13) public safety; and
- 6 (14) in the case of proposed removal of a dam that formerly related to or
7 was incident to the generation of electric energy, but which was not subject to
8 a memorandum of understanding dated prior to January 1, 2006 relating to its
9 removal, the potential for and value of future power production.

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

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

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

9 § 1087. REVIEW OF PLANS AND SPECIFICATIONS

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

17 § 1089. EMPLOYMENT OF HYDRAULIC ENGINEER

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

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

4 § 1090. CONSTRUCTION SUPERVISION

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

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

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

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

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

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

18 * * *

19 § 1098. REMOVAL OF OBSTRUCTIONS; APPROPRIATION

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

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

5 § 1099. APPEALS

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

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

11 * * *

12 § 1104. DAM REGISTRATION

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

18 (b) Dam identification.

19 (1) The Secretary shall publish a list of identified dams on the website of
20 the Agency of Natural Resources. The list shall include dams the Department
21 has identified as meeting the definition of dam under subdivision 1080(7) of

1 this title. Until January 1, 2017, the list shall be limited to dams permitted by
2 the Department under section 1082 of this title on or before July 1, 2014.

3 (2) After January 1, 2017, the Department may, according to a process
4 to be set by the Department by rule, identify additional dams for inclusion or
5 removal from the list of identified dams. The Department shall review and
6 update the list at least every two years.

7 (3) The Department shall include on the list the location and hazard
8 potential classification of every dam.

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

15 (c) Dam registration.

16 (1) On or before January 1, 2015, the person owning legal title to a dam
17 listed on the list of identified dams shall, on a form provided by the
18 Department, register the dam with the Department.

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

1 (d) Failure to submit registration. If the Department identifies the owner of
2 an unregistered dam, the Department shall notify the owner of the requirement
3 to register the dam under this section. The owner of a dam who receives notice
4 of required registration under this subsection shall have 60 days from the date
5 of the Department’s notice to submit a completed dam registration form to the
6 Department.

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

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

15 (g) Rulemaking. On or before January 1, 2015, the Department shall adopt
16 rules setting the process by which the Department may identify additional
17 dams for inclusion or removal from the list of identified dams.

18 § 1104a. ABANDONED DAMS

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

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

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

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

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

19 (B) For the dam registration under 10 V.S.A. § 1104(b)(1), a person
20 registering a dam shall pay a registration fee based on the hazard classification
21 of the dam as follows:

- 1 (i) Low hazard dam \$0.00;
- 2 (ii) Significant hazard dam \$750.00;
- 3 (iii) High hazard dam \$1,500.00.

4 (C) The annual dam safety program operation fee submitted under
5 10 V.S.A. § 1104(b)(2) shall be based on the hazard classification of the dam
6 as follows:

- 7 (i) Low hazard dam \$0.00;
- 8 (ii) Significant hazard dam \$750.00;
- 9 (iii) High hazard dam \$1,500.00.

10 * * * Dam Registration Report * * *

11 Sec. 4. DAM REGISTRATION PROGRAM REPORT

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

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

20 (2) a recommendation on whether to modify the fee structure of the dam
21 registration program;

