

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Fish, Wildlife and Water Resources to which was
3 referred House Bill No. 37 entitled “An act relating to the safety and regulation
4 of dams” respectfully reports that it has considered the same and recommends
5 that the bill be amended by striking out all after the enacting clause and
6 inserting in lieu thereof the following:

7 * * * Registration of Dams * * *

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

9 CHAPTER 43. DAMS

10 § 1079. PURPOSE

11 It is the purpose of this chapter to protect public safety through the
12 inventory, inspection, and evaluation of dams in the State.

13 § 1080. DEFINITIONS

14 As used in this chapter:

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

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

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

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

7 (5) “Time” shall be reckoned in the manner prescribed by 1 V.S.A.
8 § 138.

9 (6)(A) “Dam” means any artificial barrier, including its appurtenant
10 works, that is capable of impounding water, other liquids, or accumulated
11 sediments.

12 (B) “Dam” includes an artificial barrier that previously was capable
13 of impounding water or other liquids but that has not been properly removed or
14 mitigated.

15 (C) “Dam” shall not mean:

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

18 (ii) a highway culvert;

19 (iii) an artificial barrier at a stormwater management structure that
20 is regulated by the Agency of Natural Resources under chapter 47 of this title;

1 (iv) underground or elevated tanks to store water otherwise
2 regulated by the Agency of Natural Resources;

3 (v) an agricultural waste storage facility regulated by the Agency
4 of Agriculture, Food and Markets under 6 V.S.A. chapter 215; or

5 (vi) any other structure identified by the Department by rule.

6 (7) “Pond” means a natural body of standing water.

7 § 1081. JURISDICTION OF DEPARTMENT AND PUBLIC SERVICE

8 BOARD

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

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

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

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

8 § 1082. AUTHORIZATION

9 ~~(a) No person shall construct, enlarge, raise, lower, remodel, reconstruct, or~~
10 ~~otherwise alter any dam, pond or impoundment or other structure which is or~~
11 ~~will be capable of impounding more than 500,000 cubic feet of water or other~~
12 ~~liquid after construction or alteration, or remove, breach or otherwise lessen~~
13 ~~the capacity of an existing dam that is or was capable of impounding more than~~
14 ~~500,000 cubic feet within or along the borders of this state where land in this~~
15 ~~state is proposed to be overflowed, or at the outlet of any body of water within~~
16 ~~this state, unless authorized by the state agency having jurisdiction so to do.~~
17 ~~However, in the matter of flood control projects where cooperation with the~~
18 ~~federal government is provided for by the provisions of section 1100 of this~~
19 ~~title that section shall control~~ (1) Except as provided in subdivision (2) of this
20 subsection, a person shall not construct, enlarge, raise, lower, remodel,
21 reconstruct, remove, breach, lessen the capacity of, or otherwise alter any dam

1 or natural outlet of a pond capable of impounding more than 500,000 cubic
2 feet of water or other liquid unless authorized by the Department or the Public
3 Service Board.

4 (2) The relevant requirements of sections 1100 and 1103 of this title
5 shall govern the authorization of a flood control project involving construction
6 by or State cooperation with the federal government.

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

11 § 1083. APPLICATION

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

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

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

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

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

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

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

10 § 1083a. ~~AGRICULTURAL DAMS~~

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

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

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

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

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

19 [Repealed.]

1 § 1084. DEPARTMENT OF FISH AND WILDLIFE; INVESTIGATION

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

8 § 1085. NOTICE OF APPLICATION

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

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

20 (2) For any project subject to its jurisdiction under this chapter, the
21 ~~public service board~~ Public Service Board shall hold a hearing on the

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

9 § 1086. DETERMINATION OF PUBLIC GOOD; CERTIFICATES

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

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

18 (2) scenic and recreational values;

19 (3) fish and wildlife;

20 (4) forests and forest programs;

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

1 preserve or enhance the values and activities sought to be protected by
2 designation, the ~~agency~~ Department or the Public Service Board shall issue its
3 order approving the application. The order shall include conditions for
4 minimum stream flow to protect fish and instream aquatic life, as determined
5 by the Agency of Natural Resources, and such other conditions as the ~~agency~~
6 ~~having jurisdiction~~ Department or the Public Service Board considers
7 necessary to protect any element of the public good listed ~~above~~ in subsection
8 (a) of this section. Otherwise it shall issue its order disapproving the
9 application.

10 (c) The ~~Agency~~ Department or the Public Service Board shall provide the
11 applicant and interested parties with copies of its order.

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

18 § 1087. REVIEW OF PLANS AND SPECIFICATIONS

19 Upon receipt of an application, the ~~state agency having jurisdiction~~
20 Department or the Public Service Board shall employ a ~~registered~~ an engineer
21 experienced in the design and investigation of dams to investigate the property,

1 review the plans and specifications, and make additional investigations as it
2 considers necessary to ensure that the project adequately provides for the
3 public safety. The engineer shall report his or her findings to the ~~agency~~
4 Department or the Public Service Board. The Department or the Public
5 Service Board may assess expenses incurred in retaining an engineer under this
6 section to the applicant under 3 V.S.A. § 2809 for dams within the jurisdiction
7 of the Department and under 30 V.S.A. § 21 for dams within the jurisdiction of
8 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~~ an 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. The Department or the Public Service Board
17 may assess expenses incurred in retaining an engineer under this section to the
18 person owning legal title to the dam under 3 V.S.A. § 2809 for dams within the
19 jurisdiction of the Department and under 30 V.S.A. § 21 for dams within the
20 jurisdiction of the Public Service Board.

1 § 1090. CONSTRUCTION SUPERVISION

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

8 § 1095. UNSAFE DAM; PETITION; HEARING; EMERGENCY

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

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

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

15 * * *

16 § 1098. REMOVAL OF OBSTRUCTIONS; APPROPRIATION

17 The ~~department~~ Department may contract for the removal of sandbars,
18 debris, or other obstructions from streams which the ~~department~~ Department
19 finds that while so obstructed may be a menace in time of flood, or endanger
20 property or life below, or the property of riparian owners. The expense of

1 investigation and removal of the obstruction shall be paid by the ~~state~~ State
2 from funds provided for that purpose.

3 § 1099. APPEALS

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

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

9 * * *

10 § 1105. INSPECTION OF DAMS

11 (a) Dam safety engineer. The ~~state agency having jurisdiction~~ Department
12 or the Public Service Board shall employ an engineer to make periodic
13 inspections of nonfederal dams in the ~~state~~ State to determine their condition
14 and the extent, if any, to which they pose a potential or actual threat to life and
15 property, or shall ~~promulgate~~ adopt rules pursuant to 3 V.S.A. chapter 25 of
16 ~~Title 3~~ to require an adequate level of inspection by an independent ~~registered~~
17 engineer ~~experienced in the design and investigation of dams.~~ The ~~agency~~
18 Department or the Public Service Board shall provide the person owning legal
19 title to the dam with the findings of the inspection and any recommendations.

20 (b) Dam safety reports. If a dam inspection report is completed by the
21 Department, the Department shall provide the person owning legal title to the

1 dam with a copy of the inspection report. If a person owning legal title to a
2 dam receives a dam inspection safety report from the Department or if the
3 person is required to complete a dam inspection report under this chapter, rules
4 adopted under this chapter, or rules required by the Public Service Board, the
5 person owning legal title to the dam shall file the dam inspection report in the
6 records of the town or towns where the dam is located, provided that no person
7 shall be required to file critical energy infrastructure information, as that term
8 is defined under 18 C.F.R. § 388.112. A town clerk shall index and record
9 dam inspection reports in the land records pursuant to 24 V.S.A. §§ 1154 and
10 1161.

11 * * *

12 § 1107. HAZARD POTENTIAL CLASSIFICATIONS

13 Dams within the jurisdiction of the Department shall be assessed a hazard
14 potential classification based on the potential loss of human life, property
15 damage, and economic loss that would occur in the event of the failure of a
16 dam. The potential hazard classifications for a dam are as follows:

17 (1) “High hazard potential dam” means a dam that, if it were to fail,
18 would result in any of the following:

19 (A) probable loss of life;

20 (B) major damage to habitable structures, residences, hospitals,
21 convalescent homes, schools, roadways, or other structures; or

1 (C) excessive economic loss.

2 (2) “Significant hazard potential dam” means a dam that, if it were to
3 fail, would result in any of the following:

4 (A) possible loss of life;

5 (B) minor damage to habitable structures, residences, hospitals,
6 convalescent homes, schools, roadways, or other structures; or

7 (C) appreciable economic loss.

8 (3) “Low hazard potential dam” means a dam that, if it were to fail,
9 would result in any of the following:

10 (A) no loss of life;

11 (B) no damage to habitable structures, residences, hospitals,
12 convalescent homes, schools, roadways, or other structures; or

13 (C) minimal economic loss.

14 (4) “Negligible hazard potential dam” means a dam that, if it were to
15 fail, would result in all of the following:

16 (A) no measurable damage to roadways;

17 (B) no measurable damage to habitable structures, residences,
18 hospitals, convalescent homes, schools, roadways, or other structures; and

19 (C) negligible economic loss.

1 § 1108. DAM REGISTRATION

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

7 (b) Dam registration.

8 (1) A person owning legal title to a dam shall register the dam with the
9 Department according to the following schedule:

10 (A) on or before April 1, 2017, for a dam capable of impounding
11 500,000 cubic feet or more of water or other liquid shall register; and

12 (B) on or before April 1, 2018 for all other dams that are on the
13 Vermont Dam Inventory maintained by the Department.

14 (2) The Department shall provide a registration form to persons owning
15 legal title to a dam. As part of the registration, the person owning legal title to
16 a dam shall:

17 (A) notify the Department of the location of the dam;

18 (B) notify the Department of the initial hazard potential classification
19 of the dam based on information available to the person owning legal title to
20 the dam; and

21 (C) pay the registration fee required under 3 V.S.A. § 2822(j)(12).

1 (3) A financial institution, as that term is defined in 8 V.S.A.
2 § 11101(32), is exempt from the requirements of this section and the fee
3 required under 3 V.S.A. § 2822 when the financial institution acquires title to a
4 dam through foreclosure under 12 V.S.A. chapter 172.

5 (4) The Department shall deposit fees collected under 3 V.S.A.
6 § 2822(j)(12) into the Environmental Permit Fund under 3 V.S.A. § 2805 and
7 shall use the fees to implement the requirements of this chapter.

8 (c) Hazard potential classifications.

9 (1) The Department shall review the hazard potential classifications of
10 dams registered under this section and may, after inspection of a dam,
11 reclassify the hazard potential classification of a dam based on the location of
12 the structure in proximity to human habitation and the potential economic loss
13 from failure of the dam. The Department shall notify the person owning legal
14 title to the dam of any reclassification of the hazard potential classification
15 of a dam.

16 (2) The Department shall use the U.S. Army Corps of Engineers' Rules
17 for the National Program for Inspection of Non-federal Dams as guidance in
18 the classification and reclassification of the hazard potential classification of
19 dams in the State.

1 (3) A person owning legal title to a dam may appeal the Department's
2 reclassification of the hazard potential of a dam under this section under
3 chapter 220 of this title.

4 (4) The Secretary shall develop guidance and educational materials
5 regarding how a person who owns legal title to a dam shall assess the hazard
6 potential classification of a dam for the purposes of initial registration of a dam
7 under subsection (a) of this section.

8 (d) Failure to submit dam registration. If the Department identifies the
9 person owning legal title of an unregistered dam, the Department shall notify
10 the person owning legal title to the dam of the requirement to register the dam
11 under this section. The person owning legal title to a dam who receives notice
12 of a 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 (e) Failure to file dam registration. If a person owning legal title to a dam
16 fails to submit the dam registration form as required under subsection (b) of
17 this section, the Department may inspect the dam or retain an engineer retained
18 to inspect the dam. The Department shall assess against the person owning
19 legal title to the dam the cost to the Department of the inspection.

20 (f) Addition to Vermont Dam Inventory. When the Department is
21 informed, through registration under this section or other means, of the

1 location of a dam that is not on the Vermont Dam Inventory, the Department
2 shall add the dam to the Vermont Dam Inventory and shall notify, if
3 identifiable, the person owning legal title to the dam of the addition of the dam
4 to the inventory.

5 (g) Recording. A person owning legal title to a dam shall file the dam
6 registration required by this section or rules adopted under this chapter in the
7 records of the town or towns where the dam is located. A town clerk shall
8 index and record dam registrations in the land records pursuant to 24 V.S.A.
9 §§ 1154 and 1161.

10 (h) Lien on property on which dam is situated. When the Department takes
11 action under this section to inspect a dam or when the Department takes any
12 action under this chapter to alleviate or address a risk to life or property from a
13 dam, the Department may file a lien in favor of the State 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 to the State of the costs of the inspection
16 or other action. The lien shall arise at the time demand is made by the
17 Secretary and shall continue until the liability for such sum with interest and
18 costs is satisfied or becomes unenforceable. A lien under this section shall be
19 subordinate to a primary mortgage on the property. The Department shall
20 record notice of a lien under this section in the land records of the town in
21 which the property is located.

1 (i) Assumption of ownership of an abandoned dam. A person may assume
2 ownership of a dam by:

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

5 (2) submission of the dam registration form required under section 1108
6 of this title;

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

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

9 (j) Annual operating fee. Beginning one year after registration of a dam
10 under subsection (b) of this section, the person owning legal title to a
11 registered dam shall pay the annual operating fee required under 3 V.S.A.
12 § 2822(j)(12)

13 § 1109. MARKETABILITY OF TITLE

14 The failure of the person owning legal title to a dam to record a dam
15 registration or a dam inspection report when required under this chapter or
16 rules adopted under this chapter shall not create an encumbrance on record title
17 or an effect on marketability of title for the real estate property or properties on
18 which dam is located, except when the Department files a lien on property
19 under section 1108 of this title.

1 § 1110. RULEMAKING

2 The Commissioner of Environmental Conservation may adopt rules to
3 implement the requirements of this chapter for dams within the jurisdiction of
4 the Department. The rules may include standards for the siting, design,
5 construction, reconstruction, enlargement, alteration, operation, monitoring,
6 maintenance, modification, inspection, reporting, repair, breach, removal of, or
7 emergency action plans for a dam in the State.

8 § 1111. NATURAL RESOURCES ATLAS; DAM STATUS

9 (a) Submission to Department. Annually on or before January 1, the Public
10 Service Board and the Secretary of Agriculture, Food and Markets shall submit
11 to the Department the presence, location, and hazard potential classification of
12 any dam within its jurisdiction or learned of within the previous calendar year.

13 (b) Update of Natural Resources Atlas. Beginning on January 1, 2016, the
14 Secretary of Natural Resources shall update the Natural Resources Atlas on the
15 Agency of Natural Resources' website to include the status of dams identified
16 on the Atlas. The Atlas shall include all information submitted under
17 subsection (a) of this section and the presence, location, and hazard potential
18 classification of any dam within the jurisdiction of the Department. The
19 Department shall include on the Atlas the person owning legal title to the dam,
20 if known.

1 administering the Environmental Division established under 4 V.S.A.
2 chapter 27. The amount of \$143,000.00 per fiscal year shall be disbursed for
3 this purpose.

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

15 (c) The Secretary shall use any fee required to be collected under
16 subdivision 2822(j)(12) of this title for dam registrations solely to cover all
17 direct or indirect costs required to support the programs authorized under
18 10 V.S.A. chapter 43. When the fees collected under subdivision 2822(j)(12)
19 of this title exceed the annual funding needs of 10 V.S.A. chapter 43, the
20 Secretary shall deposit the excess funds into the Unsafe Dam Revolving Loan
21 Fund under 10 V.S.A. § 1106.

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

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

4 (B) For the dam registration under 10 V.S.A. § 1108, a person
5 registering a:

6 (i) a high hazard potential, significant hazard potential, or low
7 hazard potential dam shall pay a registration fee of \$200.00; and

8 (ii) a negligible hazard potential dam shall pay a registration fee of
9 \$100.00.

10 (C) The annual dam operating fee submitted under 10 V.S.A. § 1108
11 shall be based on the hazard potential classification of the dam as follows:

12 (i) High hazard potential dam \$1,000.00.

13 (ii) Significant hazard potential dam \$350.00.

14 (iii) Low hazard potential dam \$200.00.

15 (iv) Negligible hazard potential dam \$0.00.

16 * * * Dam Registration Report * * *

17 Sec. 4. DAM REGISTRATION PROGRAM REPORT

18 On or before January 1, 2017, the Department of Environmental
19 Conservation shall submit a report to the House Committee on Fish, Wildlife
20 and Water Resources, the House Committee on Ways and Means, the Senate

1 Committee on Natural Resources and Energy, and the Senate Committee on
2 Finance. The report shall contain:

3 (1) an evaluation of the dam registration program under 10 V.S.A.
4 chapter 43;

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

7 (3) a summary of the dams registered under the program, organized by
8 amount of water impounded and hazard potential classification; and

9 (4) an evaluation of any other dam safety concerns related to dam
10 registration.

11 * * * Effective Date * * *

12 Sec. 5. EFFECTIVE DATE

13 This act shall take effect on July 1, 2015.

14

15

16 (Committee vote: _____)

17

18

Representative _____

19

FOR THE COMMITTEE

20