

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Natural Resources, Fish, and Wildlife to which was
3 referred House Bill No. 554 entitled “An act relating to the regulation of dams”
4 respectfully reports that it has considered the same and recommends that the
5 bill be amended by striking out all after the enacting clause and inserting in
6 lieu thereof the following:

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

8 CHAPTER 43. DAMS

9 § 1079. PURPOSE

10 It is the purpose of this chapter to protect public safety and provide for the
11 public good through the inventory, inspection, and evaluation of dams in the
12 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”~~ “Interested person” means, in relation to any
2 dam, a person; who has riparian rights affected by that dam; who has a
3 substantial interest in economic or recreational activity affected by the dam; or;
4 whose safety would be endangered by a failure of the dam; or who notifies the
5 Department of interest in the dam.

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

8 (5) “Time” shall be reckoned in the manner prescribed by 1 V.S.A.
9 § 138.

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

13 (B) “Dam” includes an artificial barrier that meets all of the
14 following:

15 (i) previously was capable of impounding water, other liquids, or
16 accumulated sediments;

17 (ii) was partially breached; and

18 (iii) has not been properly removed or mitigated.

19 (C) “Dam” shall not mean:

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

1 (ii) transportation infrastructure that has no normal water storage
2 capacity and that impounds water only during storm events;

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

5 (iv) an underground or elevated tank to store water otherwise
6 regulated by the Agency of Natural Resources;

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

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

10 § 1081. JURISDICTION OF DEPARTMENT AND PUBLIC UTILITY

11 COMMISSION

12 (a) Powers and duties. Unless otherwise provided, the powers and duties
13 authorized by this chapter shall be exercised by the Department, except that the
14 Public Utility Commission shall exercise those powers and duties over dams
15 and projects that relate to or are incident to the generation of electric energy for
16 public use or as a part of a public utility system.

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

1 transferred from the Public Utility Commission to the Department whenever
2 such a federal license expires or is otherwise lost, whenever such a certificate
3 of public good is revoked or otherwise lost, or whenever the Public Utility
4 Commission denies an application for a certificate of public good.

5 (c) Transfer of records. Upon transfer of jurisdiction as set forth in
6 subsection (b) of this section and upon written request, the State agency having
7 former jurisdiction over a dam shall transfer copies of all records pertaining to
8 the dam to the agency acquiring jurisdiction.

9 § 1082. AUTHORIZATION

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

1 (b) For the purposes of this chapter, the volume a dam or other structure is
2 capable of impounding is the volume of water or other liquid, including any
3 accumulated sediments, controlled by the structure with the water or liquid
4 level at the top of the lowest nonoverflow part of the structure.

5 § 1083. APPLICATION

6 (a) Any person who proposes to undertake an action subject to regulation
7 pursuant to section 1082 of this title shall apply in writing to the State agency
8 having jurisdiction. The application shall set forth:

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

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

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

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

17 (5) other information that the ~~state~~ State agency having jurisdiction
18 considers necessary to ~~properly~~ 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~~ State agency having jurisdiction prior to any hearing or meeting relating
16 to the determination of public good and public safety.

17 § 1085. NOTICE OF APPLICATION

18 Upon receipt of the application required by section 1082 of this title, the
19 State agency having jurisdiction shall give notice to the legislative body of
20 each municipality in which the dam is ~~allocated~~ located and to all persons
21 interested persons.

1 (1) The Department shall proceed in accordance with chapter 170 of this
2 title.

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

13 § 1086. DETERMINATION OF PUBLIC GOOD; CERTIFICATES

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

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

21 (2) scenic and recreational values;

1 (3) fish and wildlife;

2 (4) forests and forest programs;

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

5 [Repealed.]

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

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

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

12 (9) the creation of any public benefits;

13 (10) ~~the classification, if any, of the affected waters under chapter 47 of~~
14 ~~this title~~ attainment of the Vermont water quality standards;

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

16 (12) municipal grand lists and revenues;

17 (13) public safety; and

18 (14) in the case of the proposed removal of a dam that formerly related
19 to or was incident to the generation of electric energy, but ~~which~~ that was not
20 subject to a memorandum of understanding dated prior to January 1, 2006
21 relating to its removal, the potential for and value of future power production.

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

11 (c) The ~~Agency~~ State agency having jurisdiction shall provide the applicant
12 and interested ~~parties~~ persons with copies of its order.

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

19 § 1087. REVIEW OF PLANS AND SPECIFICATIONS

20 ~~Upon receipt of an application, the state~~ For any proposal subject to
21 authorization under section 1082, the State agency having jurisdiction shall

1 employ a ~~registered~~ an engineer ~~experienced in the design and investigation of~~
2 ~~dams~~ to investigate the property, review the plans and specifications, and make
3 additional investigations as ~~it~~ the State agency having jurisdiction considers
4 necessary to ensure that the project adequately provides for the public safety.

5 The engineer shall report his or her findings to the ~~agency~~ State agency having
6 jurisdiction.

7 § 1089. EMPLOYMENT OF ~~HYDRAULIC~~ ENGINEER

8 With the approval of the ~~governor~~ Governor, the ~~state~~ State agency having
9 jurisdiction may employ a ~~competent hydraulic~~ an engineer to investigate the
10 property, review the plans and specifications, and make such additional
11 investigation as ~~such~~ the State agency shall deem necessary, and such engineer
12 shall report to the State agency his or her findings in respect thereto.

13 § 1090. CONSTRUCTION SUPERVISION

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

19 § 1095. UNSAFE DAM; PETITION; HEARING; EMERGENCY

20 (a) On receipt of a petition signed by ~~not less~~ no fewer than ten ~~persons in~~
21 ~~interest~~ interested persons or the legislative body of a municipality, the State

1 agency having jurisdiction shall, or upon its own motion it may, institute
2 investigations by an engineer as described in section 1087 of this title
3 regarding the safety of any existing dam or portion of a dam, of any size. The
4 agency may fix a time and place for hearing and shall give notice in the
5 manner it directs to all ~~parties~~ interested persons. The engineer shall present
6 his or her findings and recommendations at the hearing. After the hearing, if
7 the agency finds that the dam or portion of the dam as maintained or operated
8 is unsafe or is a menace to people or property above or below the dam, it shall
9 issue an order directing reconstruction, repair, removal, breaching, draining, or
10 other action it considers necessary to ~~make the dam safe~~ improve the safety of
11 the dam sufficiently to protect life and property as required by the State agency
12 having jurisdiction.

13 (b) If, upon the expiration of such date as may be ordered, the ~~owner of~~
14 person owning legal title to such dam or the owner of the land on which the
15 dam is located has not complied with the order directing the reconstruction,
16 repair, breaching, removal, draining, or other action of such unsafe dam, the
17 ~~state~~ State agency having jurisdiction may petition the ~~superior court~~ Superior
18 Court in the county in which the dam is located to enforce its order or exercise
19 the right of eminent domain to acquire ~~such~~ the rights ~~as~~ that may be necessary
20 to effectuate a remedy as the public safety or public good may require. If the
21 order has been appealed, the court may prohibit the exercise of eminent

1 domain by the State agency having jurisdiction pending disposition of the
2 appeal.

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

8 § 1097. ~~SURVEY OF EXISTING DAMS; ORDERS FOR PROTECTION OF~~
9 ~~SALMON~~

10 ~~The Fish and Wildlife Board shall forthwith make a survey of all dams~~
11 ~~within the state which impound more than three hundred thousand cubic feet of~~
12 ~~water and determine if the operation of such dams adversely affects the~~
13 ~~propagation and preservation of salmon, or materially diminishes the amount~~
14 ~~of flow in portions of a stream likely to be used for such preservation and~~
15 ~~propagation of salmon. If the Board determines that the operation of an~~
16 ~~existing dam does adversely affect the propagation and preservation of salmon~~
17 ~~or materially diminishes the flow of water over portions of stream likely to be~~
18 ~~used therefor, it shall order such changes in operation for such length of time~~
19 ~~or times as are reasonably necessary in its judgment to fully protect such~~
20 ~~preservation and propagation of salmon. Any order of the board made under~~
21 ~~this section shall be based upon facts found and stated. Appeal from an order~~

1 of the board may be taken in the manner prescribed for appeals from the Public
2 Utility Commission as provided in 30 V.S.A. chapter 1. [Repealed.]

3 **§ 1098. REMOVAL OF OBSTRUCTIONS; APPROPRIATION**

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

9 [Repealed.]

10 * * *

11 **§ 1105. INSPECTION OF DAMS**

12 (a) Inspection; schedule. All nonfederal dams in the State shall be
13 inspected according to a schedule adopted by rule by the State agency having
14 jurisdiction over the dam.

15 (b) Dam inspection. A nonfederal dam in the State shall be inspected under
16 one or both of the following methods:

17 (1) The State agency having jurisdiction shall over a dam may employ
18 an engineer to make periodic inspections of nonfederal dams in the State to
19 determine their condition and the extent, if any, to which they pose a potential
20 possible or actual probable threat to life and property, or.

1 § 1108. DAM INVENTORY; REGISTRATION

2 (a) Dam inventory. The Department of Environmental Conservation shall
3 maintain a current inventory of all known dams in the State of Vermont. The
4 Department of Environmental Conservation shall update and publish the
5 Vermont Dam Inventory annually and shall include information collected in
6 the Inventory as part of the Agency of Natural Resources' Natural Resources
7 Atlas.

8 (b) Dam registration. If a dam is listed on the Vermont Dam Inventory and
9 is under the jurisdiction of the Department, the person owning legal title to a
10 dam or the person owning the land on which the dam is located shall, upon
11 request of the Department, submit information to the Department regarding the
12 dam, including the condition of the dam, whether and when the dam has been
13 inspected, and any other information that the Department may require to
14 ensure public safety. A person who fails to comply with the request of the
15 Department under this section shall be subject to a civil penalty under chapter
16 201 of this title.

17 (c) Rulemaking. The Department may adopt rules regarding the
18 information collection requirements of this section, including the mechanism
19 for registration, the frequency of registration, the type of information to be
20 collected, and whether the location of a dam on a property must be recorded in
21 the land records of the municipality in which it is located.

1 § 1109. MARKETABILITY OF TITLE

2 The failure of the person owning legal title to a dam or the owner of the
3 land on which the dam is located to record a dam registration or a dam
4 inspection report when required under this chapter or rules adopted under this
5 chapter shall not create an encumbrance on record title or an effect on
6 marketability of title for the real estate property or properties on which the dam
7 is located.

8 § 1110. RULEMAKING

9 The Commissioner of Environmental Conservation shall adopt rules to
10 implement the requirements of this chapter for dams under the jurisdiction of
11 the Department. The rules shall include:

12 (1) a standard or regulatory threshold under which a dam is exempt from
13 the registration or inspection requirements of this chapter;

14 (2) standards for:

15 (A) the siting, design, construction, reconstruction, enlargement,
16 modification, or alteration of a dam;

17 (B) operation and maintenance of a dam;

18 (C) inspection, monitoring, record keeping, and reporting;

19 (D) repair, breach, or removal of a dam; and

20 (E) application for authorization under section 1082 of this title.

1 (3) requirements for the development of an emergency action plan for a
2 dam, including guidance on how to develop an emergency action plan, the
3 content of a plan, and when and how an emergency action plan should be
4 updated;

5 (4) criteria for the hazard potential classification of dams in the State;

6 (5) a process by which a person owning legal title to a dam or a person
7 owning the land on which the dam is located shall register a dam; and

8 (6) requirements for the person owning legal title to a dam or the person
9 owning the land on which the dam is located to conduct inspections of the
10 dam.

11 § 1111. NATURAL RESOURCES ATLAS; DAM STATUS

12 Annually on or before January 1, the **Public Utility Commission** shall
13 submit to the Department updated inventory information from the previous
14 calendar year for dams under the jurisdiction of the Public Utility Commission.

15 Sec. 2. DAM REGISTRATION PROGRAM REPORT

16 On or before January 1, 2023, the Department of Environmental
17 Conservation shall submit a report to the House Committees on Natural
18 Resources, Fish, and Wildlife and on Ways and Means and the Senate
19 Committees on Natural Resources and Energy and on Finance. The report
20 shall contain:

1 (1) an evaluation of the dam registration program under 10 V.S.A.

2 chapter 43;

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

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

7 (4) an evaluation of any other dam safety concerns related to dam
8 registration.

9 Sec. 3. ADOPTION OF RULES

10 The Secretary of Natural Resources shall adopt the rules required under
11 10 V.S.A. § 1110 as follows:

12 (1) the rules required under 10 V.S.A. § 1110(1) (exemptions),
13 § 1110(3) (emergency action plan), § 1110(4) (hazard potential classification),
14 § 1110(5) (dam registration), and § 1110(6) (dam inspection) shall be adopted
15 on or before July 1, 2020; and

16 (2) the rules required under 10 V.S.A. § 1110(2) (dam design standards)
17 shall be adopted on or before July 1, 2022.

18 Sec. 4. EFFECTIVE DATE

19 This act shall take effect on July 1, 2018.

20

21

1 (Committee vote: _____)

2

3

Representative _____

4

FOR THE COMMITTEE