

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Natural Resources, Fish and Wildlife to which was  
3 referred House Bill No. 92 entitled “An act relating to the registration 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 \* \* \* 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”~~ “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:

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

16                   (ii) was partially breached; and

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

18           (C) “Dam” shall not mean:

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

21                   (ii) a highway culvert;

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

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

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

7                    (vi) a negligible hazard potential dam; or

8                    (vii) any other structure identified by the Department by rule.

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

11                    (A) no measurable damage to roadways;

12                    (B) no measurable damage to habitable structures, including  
13                    residences, hospitals, convalescent homes, schools, roadways, or other  
14                    structures; and

15                    (C) negligible economic loss.

16                    (8) “Pond” means a natural body of standing water.

17                    § 1081. JURISDICTION OF DEPARTMENT AND PUBLIC SERVICE

18                    BOARD

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

1 duties over dams and projects that relate to or are incident to the generation of  
2 electric energy for public use or as a part of a public utility system.

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

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

18 § 1082. AUTHORIZATION

19 (a) No person shall construct, enlarge, raise, lower, remodel, reconstruct, or  
20 otherwise alter any dam, pond, or impoundment or other structure which is or  
21 will be capable of impounding more than 500,000 cubic feet of water or other

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

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

13 § 1083. APPLICATION

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

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

19 (2) the approximate area to be overflowed and the approximate number  
20 of, 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~~ State agency having jurisdiction  
6 considers necessary to ~~properly~~ review the application.

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

9 § 1083a. ~~AGRICULTURAL DAMS~~

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

7 § 1085. NOTICE OF APPLICATION

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

12 (4) The Department shall proceed in accordance with chapter 170 of this  
13 title.

14 (2) For any project subject to its jurisdiction under this chapter, the  
15 ~~public service board~~ Public Service Board shall hold a hearing on the  
16 application. The purpose of the hearing shall be to determine whether the  
17 project serves the public good as defined in section 1086 of this title and  
18 provides adequately for the public safety. The hearing shall be held in a  
19 municipality in the vicinity of the proposed project and may be consolidated  
20 with other hearings, including hearings under 30 V.S.A. § 248 concerning the  
21 same project. Notice shall be given at least 10 days before the hearing to



1 interested persons by posting in the municipal offices of the towns in which the  
2 project will be completed and by publishing in a local newspaper.

3 § 1086. DETERMINATION OF PUBLIC GOOD; CERTIFICATES

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

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

11 (2) scenic and recreational values;

12 (3) fish and wildlife;

13 (4) forests and forest programs;

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

16 [Repealed.]

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

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

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

3           (9) the creation of any public benefits;

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

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

7           (12) municipal grand lists and revenues;

8           (13) public safety; and

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

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

1 good listed ~~above~~ in subsection (a) of this section. Otherwise it shall issue its  
2 order disapproving the application.

3 (c) The ~~Agency~~ Department shall provide the applicant and interested  
4 ~~parties~~ persons with copies of its order.

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

11 § 1087. REVIEW OF PLANS AND SPECIFICATIONS

12 ~~Upon receipt of an application, the state agency having jurisdiction~~ For any  
13 proposal subject to authorization under section 1082, the Department shall  
14 ~~employ a registered an engineer experienced in the design and investigation of~~  
15 ~~dams~~ to investigate the property, review the plans and specifications, and make  
16 additional investigations as ~~it~~ the Department considers necessary to ensure  
17 that the project adequately provides for the public safety. The engineer shall  
18 report his or her findings to the ~~agency~~ Department. The Department may  
19 assess expenses incurred in retaining an engineer under this section to the  
20 applicant under 3 V.S.A. § 2809.

1 § 1089. EMPLOYMENT OF ~~HYDRAULIC~~ ENGINEER

2 With the approval of the ~~governor~~ Governor, the ~~state agency having~~  
3 ~~jurisdiction~~ Department may employ a ~~competent hydraulic~~ an engineer to  
4 investigate the property, review the plans and specifications, and make such  
5 additional investigation as ~~such agency~~ the Department shall deem necessary,  
6 and such engineer shall report to the ~~agency~~ Department his or her findings in  
7 respect thereto. The Department may assess expenses incurred in retaining an  
8 engineer under this section to the person owning legal title to the dam under  
9 3 V.S.A. § 2809.

10 § 1090. CONSTRUCTION SUPERVISION

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

16 § 1095. UNSAFE DAM; PETITION; HEARING; EMERGENCY

17 (a) On receipt of a petition signed by ~~not less~~ no fewer than ten ~~persons in~~  
18 ~~interest~~ interested persons or the legislative body of a municipality, the ~~agency~~  
19 ~~having jurisdiction~~ Department shall, or upon its own motion it may, institute  
20 investigations by an engineer as described in section 1087 of this title  
21 regarding the safety of any existing dam or portion of a dam, of any size. The

1 ~~agency~~ Department may fix a time and place for hearing and shall give notice  
2 in the manner it directs to all parties interested. The engineer shall present his  
3 or her findings and recommendations at the hearing. After the hearing, if the  
4 ~~agency~~ Department finds that the dam or portion of the dam as maintained or  
5 operated is unsafe or is a menace to people or property above or below the  
6 dam, it shall issue an order directing reconstruction, repair, removal, breaching,  
7 draining, or other action it considers necessary to ~~make the dam safe~~ improve  
8 the safety of the dam.

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

19 (c) If, upon completion of the investigation described in subsection (a) of  
20 this section, the ~~state agency having jurisdiction~~ Department considers the dam  
21 to present an imminent threat to human life or property, it shall take whatever

1 action it considers necessary to protect life and property, and subsequently  
2 conduct the hearing described in subsection (a).

3 \* \* \*

4 ~~§ 1097. SURVEY OF EXISTING DAMS; ORDERS FOR PROTECTION OF~~  
5 ~~SALMON~~

6 ~~The fish and wildlife board shall forthwith make a survey of all dams within~~  
7 ~~the state which impound more than three hundred thousand cubic feet of water~~  
8 ~~and determine if the operation of such dams adversely affects the propagation~~  
9 ~~and preservation of salmon, or materially diminishes the amount of flow in~~  
10 ~~portions of a stream likely to be used for such preservation and propagation of~~  
11 ~~salmon. If the board determines that the operation of an existing dam does~~  
12 ~~adversely affect the propagation and preservation of salmon or materially~~  
13 ~~diminishes the flow of water over portions of stream likely to be used therefor,~~  
14 ~~it shall order such changes in operation for such length of time or times as are~~  
15 ~~reasonably necessary in its judgment to fully protect such preservation and~~  
16 ~~propagation of salmon. Any order of the board made under this section shall~~  
17 ~~be based upon facts found and stated. Appeal from an order of the board may~~  
18 ~~be taken in the manner prescribed for appeals from the public service board as~~  
19 ~~provided in chapter 1 of Title 30. [Repealed.]~~

1 § 1098. REMOVAL OF OBSTRUCTIONS; APPROPRIATION

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

8 § 1099. APPEALS

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

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

14 \* \* \*

15 § 1105. INSPECTION OF DAMS

16 (a) Dam safety engineer. The ~~State agency having jurisdiction~~ Department  
17 shall employ an engineer to make periodic inspections of nonfederal dams in  
18 the State to determine their condition and the extent, if any, to which they pose  
19 a ~~potential~~ possible or ~~actual~~ probable threat to life and property, or shall  
20 ~~promulgate~~ adopt rules pursuant to 3 V.S.A. chapter 25 of Title 3 to require an  
21 adequate level of inspection by an independent ~~registered~~ engineer ~~experienced~~

1 ~~in the design and investigation of dams.~~ The ~~agency~~ Department shall provide  
2 the ~~owner~~ person owning legal title to the dam with the findings of the  
3 inspection and any recommendations.

4 (b) Dam safety reports. If a dam inspection report is completed by the  
5 Department, the Department shall provide the person owning legal title to the  
6 dam with a copy of the inspection report.

7 \* \* \*

8 § 1107. HAZARD POTENTIAL CLASSIFICATIONS

9 Dams required to be registered with the Department under section 1108 of  
10 this title shall be assessed a hazard potential classification based on the  
11 potential loss of human life, property damage, and economic loss that would  
12 occur in the event of the failure of a dam. The hazard potential classifications  
13 for a dam are as follows:

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

16 (A) probable loss of life;

17 (B) major damage to habitable structures, including residences,  
18 hospitals, convalescent homes, schools, roadways, or other structures; or

19 (C) excessive economic loss.

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



1           (A) possible loss of life;

2           (B) minor damage to habitable structures, including residences,  
3 hospitals, convalescent homes, schools, roadways, or other structures; or

4           (C) appreciable economic loss.

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

7           (A) no loss of life;

8           (B) no damage to habitable structures, including residences,  
9 hospitals, convalescent homes, schools, roadways, or other structures; or

10          (C) minimal economic loss.

11          § 1108. DAM REGISTRATION

12          (a) Dam registration.

13           (1) A person owning legal title to a dam shall register the dam with the  
14 Department if:

15           (A) the dam is capable of impounding 500,000 cubic feet or more of  
16 water, other liquids, or accumulated sediments; or

17           (B) the dam is listed on the Vermont Dam Inventory maintained by  
18 the Department.

19           (2) A financial institution, as that term is defined in 8 V.S.A.

20          § 11101(32), is exempt from the requirements of this section and the fee

1 required under 3 V.S.A. § 2822 when the financial institution acquires title to a  
2 dam through foreclosure under 12 V.S.A. chapter 172.

3 (b) Registration process.

4 (1) The Department shall provide a registration form to persons owning  
5 legal title to a dam. The Department shall allow registration in paper or  
6 electronic format.

7 (2) As part of the registration, the person owning legal title to a dam  
8 shall:

9 (A) notify the Department of the location of the dam, including the  
10 coordinates of the location in latitude and longitude or an equivalent accurate  
11 method; and

12 (B) notify the Department of the initial hazard potential classification  
13 of the dam based on information available to the person owning legal title to  
14 the dam.

15 (c) Hazard potential classifications.

16 (1) 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.

20 (2) For the purposes of initial registration of a dam under subsection (a)  
21 of this section, the Department shall develop guidance and educational

1 materials regarding how a person shall assess the hazard potential  
2 classification of a dam in a manner consistent with the hazard potential  
3 classification adopted by the Department under subdivision (1) of this  
4 subsection.

5 (3)(A) The Department shall review the hazard potential classifications  
6 of dams under its jurisdiction that are registered under this section and may,  
7 after inspection of a dam, reclassify the hazard potential classification of a dam  
8 based on the location of the structure in proximity to human habitation and the  
9 potential economic loss from failure of the dam. The Department shall notify  
10 the person owning legal title to the dam of any reclassification of the hazard  
11 potential classification of a dam.

12 (B) The hazard potential classification of a dam within the  
13 jurisdiction of the Public Service Board shall be reclassified according to the  
14 Department rules for the safety of hydroelectric dams.

15 (4) A person owning legal title to a dam may appeal the Department's  
16 reclassification of the hazard potential of a dam under this section under  
17 chapter 220 of this title.

18 (d) Notification of dam registration requirement. If the Department  
19 identifies the person owning legal title of an unregistered dam, the Department  
20 shall notify the person owning legal title to the dam of the requirement to  
21 register the dam under this section. The person owning legal title to a dam

1 who receives notice of a required registration under this subsection shall have  
2 60 days from the date of the Department's notice to submit a complete dam  
3 registration form to the Department.

4 (e) Failure to file dam registration. If a person owning legal title to a dam  
5 fails to submit the dam registration form as required under subsection (b) of  
6 this section, the Department may inspect the dam or retain an engineer to  
7 inspect the dam. The Department shall assess against the person owning legal  
8 title to the dam the cost to the Department of the inspection.

9 (f) Addition to Vermont Dam Inventory. When the Department is  
10 informed, through registration under this section or other means, of the  
11 location of a dam that is not on the Vermont Dam Inventory, the Department  
12 shall add the dam to the Vermont Dam Inventory and shall notify, if  
13 identifiable, the person owning legal title to the dam of the addition of the dam  
14 to the inventory.

15 (g) Recording. A person owning legal title to a dam shall file the dam  
16 registration required by this section or rules adopted under this chapter in the  
17 records of the town or towns where the dam is located. The registration form  
18 shall include information on how a person may obtain a dam safety inspection  
19 report for the dam. A town clerk shall index and record dam registrations in  
20 the land records pursuant to 24 V.S.A. §§ 1154 and 1161.

1        (h) Lien on property on which dam is situated. When the Department takes  
2        action under this section to inspect a dam or when the Department takes any  
3        action under this chapter to alleviate or address a risk to life or property from a  
4        dam within the jurisdiction of the Department, the Department may file a lien  
5        in favor of the State on the property on which the dam is located and on the  
6        buildings and structures located on that property in order to secure repayment  
7        to the State of the costs of the inspection or other action. The lien shall arise at  
8        the time demand is made by the Secretary and shall continue until the liability  
9        for such sum with interest and costs is satisfied or becomes unenforceable. A  
10       lien under this section shall be subordinate to a primary mortgage on the  
11       property. The Department shall record notice of a lien under this section in the  
12       land records of the town in which the property is located.

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 the 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 shall adopt rules to  
3 implement the requirements of this chapter. The rules shall include:

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

6             (2) standards for:

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

9             (B) operation and maintenance of a dam;

10            (C) inspection, monitoring, recordkeeping, and reporting;

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

12            (3) requirements for the development of an emergency action plan for a  
13 dam, including guidance on how to develop an emergency action plan, the  
14 content of a plan, and when and how an emergency action plan should be  
15 updated.

16     § 1111. NATURAL RESOURCES ATLAS; DAM STATUS

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

1        (b) Update of Natural Resources Atlas. Beginning on January 1, 2018, the  
2        Secretary of Natural Resources shall update the Natural Resources Atlas on the  
3        Agency of Natural Resources’ website to include the status of dams identified  
4        on the Atlas. The Atlas shall include all information submitted under  
5        subsection (a) of this section and the presence, location, and hazard potential  
6        classification of any dam within the jurisdiction of the Department. The  
7        Department shall include on the Atlas the person owning legal title to the dam,  
8        if known.

9        (c) Additional information. The Department may enter a memorandum of  
10       understanding with the Public Service Board and the Secretary of Agriculture,  
11       Food and Markets regarding additional information regarding dams to be  
12       submitted to the Department under this section.

13                    \* \* \* Transfer of PSB Dams to the Department of  
14                    Environmental Conservation \* \* \*

15        Sec. 2. FORMER PUBLIC SERVICE BOARD RULES; INSPECTION

16        Public Service Board Rule 4.500 Safety of Hydroelectric Dams, as that rule  
17        existed immediately prior to the effective date of this act, shall be deemed a  
18        rule of the Department of Environmental Conservation for purposes of  
19        administering the requirements of 10 V.S.A. chapter 43 for safety and  
20        inspection of dams that relate to or are incident to the generation of electric  
21        energy for public use or that are part of a public utility system. The Secretary

1 of Natural Resources may amend the rule in accordance with 3 V.S.A.  
2 chapter 25. The Department shall maintain the rules for the safety of  
3 hydroelectric dams separately from rules authorized for adoption under  
4 10 V.S.A. chapter 43.

5 \* \* \* Dam Registration Report \* \* \*

6 Sec. 3. DAM REGISTRATION PROGRAM REPORT

7 On or before January 1, 2019, the Department of Environmental  
8 Conservation shall submit a report to the House Committees on Natural  
9 Resources, Fish and Wildlife and on Ways and Means, and the Senate  
10 Committees on Natural Resources and Energy and on Finance. The report  
11 shall contain:

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

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

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

18 (4) an evaluation of any other dam safety concerns related to dam  
19 registration.



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\* \* \* Implementation \* \* \*

Sec. 4. ADOPTION OF RULES

The Secretary of Natural Resources shall adopt the rules required under 10 V.S.A. § 1110 regarding the regulation of dams on or before July 1, 2018.

\* \* \* Effective Dates \* \* \*

Sec. 5. EFFECTIVE DATES

This act shall take effect on July 1, 2017, except that:

- (1) 10 V.S.A. §§ 1083 and 1085 shall take effect on January 2, 2018; and
- (2) the requirement to register a dam under 10 V.S.A. § 1108 shall take effect on July 1, 2019.

(Committee vote: \_\_\_\_\_)

\_\_\_\_\_

Representative \_\_\_\_\_

FOR THE COMMITTEE