Introduced by Senator Campion

Referred to Committee on

Date:

Subject: Fish and wildlife; Fish and Wildlife Board; governance

Statement of purpose of bill as introduced: This bill proposes to transfer the authority to adopt rules for the taking of fish, wildlife, and fur-bearing animals from the Fish and Wildlife Board to the Department of Fish and Wildlife. The bill would also amend the authority of the Fish and Wildlife Board so that it serves in an advisory capacity to the Department of Fish and Wildlife.

An act relating to the management of fish and wildlife

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 10 V.S.A. §§ 4041 and 4042 are amended to read:

§ 4041. DEPARTMENT OF FISH AND WILDLIFE; FISH AND WILDLIFE BOARD; MEMBERS, TERM, CHAIR

(a) There is hereby established a Department of Fish and Wildlife that shall be administered by the Commissioner. The Department shall be under the direction and supervision of a Commissioner appointed by the Secretary as provided in 3 V.S.A. § 2851. In addition to the duties and powers provided under this chapter, the Commissioner shall have the powers and duties...
specified in 3 V.S.A. § 2852 and such additional duties as may be assigned to
the Commissioner by the Secretary under 3 V.S.A. § 2853. The Commissioner
shall implement the policy and purposes specified in section 4081 of this title
where appropriate and to the extent that resources of the Department permit.

(b)(1) There is hereby established a Fish and Wildlife Board. The Board
shall consist of 14 members, one from each county, appointed by the
Governor with the advice and consent of the Senate. Four members of the
Board shall be appointed by the Commissioner, four members of the Board
shall be appointed by the Speaker of the House, and four members of the
Board shall be appointed by the Committee on Committees. The members of
the Board shall be appointed for a term of six years, or the unexpired portion
thereof, and during their terms shall reside in the county from which they are
appointed. In the event a member no longer resides in the county from which
he or she was appointed, the Governor shall appoint a member from that
county for the unexpired portion of the term. Appointments shall be made in
such a manner that either two or three terms shall expire each year. A member
serving a full six-year term shall not be eligible for reappointment. The
Governor Commissioner shall biennially designate a chair.

(2) In order to be appointed to the Board, a person shall apply in writing
to the appointing authority. The appointing authority shall acknowledge, in
writing, the receipt of each application.
(3) In considering applicants to the Board, the appointing authority shall give due consideration to:

(A) the need for geographic diversity on the part of the Board’s membership; and

(B) the need for the Board members to have a history of involvement with and dedication to fish, wildlife, conservation, and natural resources.

(c) Upon appointment, each Board member shall receive training from the Department on coexistence with wildlife, the reduction of conflict between humans and wildlife, and the impacts of climate change on fish and wildlife.

(d) Upon the filing of a proposed rule with the Secretary of State pursuant to 3 V.S.A. § 838, the Department shall submit the proposed rule to the Board for its review. After a public hearing and an opportunity for the public to submit written comments, the Board shall consider whether a proposed rule is designed to maintain the best health, population, and utilization levels of the regulated species and of other necessary or desirable species that are ecologically related to the regulated species and whether the rules are adequately supported by investigation and research conducted by the Department. If the Board, by majority vote, determines that a proposed rule should be revised, it shall submit a written report to the Department setting forth its recommended revisions, and the reasons therefore, within 60 days of its receipt of a proposed rule. The Board shall include with its report the
public comments it received. The Department shall consider fully any recommendations by the Board and shall issue a written explanation of why it overruled the Board’s arguments and considerations for revising the rule. The Board’s written report and the Department’s response thereto shall be included with the materials submitted to the Legislative Committee on Administrative Rules under 3 V.S.A. § 841.

§ 4042. COMMISSIONER; APPOINTMENT

The Commissioner shall be appointed pursuant to the provisions of 3 V.S.A. § 2851. The Commissioner shall also be Executive Secretary of the Board. [Repealed.]

Sec. 2. 10 V.S.A. § 4081 is amended to read:

§ 4081. POLICY

(a)(1) As provided by Chapter II, § 67 of the Constitution of the State of Vermont, the fish and wildlife of Vermont are held in trust by the State for the benefit of the citizens of Vermont and shall not be reduced to private ownership. The State of Vermont, in its sovereign capacity as a trustee for the citizens of the State, shall have ownership, jurisdiction, and control of all of the fish and wildlife of Vermont.

(2) The Commissioner of Fish and Wildlife shall manage and regulate the fish and wildlife of Vermont in accordance with the requirements of this part and the rules of the Fish and Wildlife Board. The protection, propagation
control, management, and conservation of fish, wildlife, and fur-bearing
animals in this State are in the interest of the public welfare. The State,
through the Commissioner of Fish and Wildlife, shall safeguard the fish,
wildlife, and fur-bearing animals of the State for the people of the State, and
the State shall fulfill this duty with a constant and continual vigilance.

(b) Notwithstanding the provisions of 3 V.S.A. § 2803, the Fish and
Wildlife Board shall be the State agency charged with carrying out the
purposes of this subchapter.

(e) An abundant, healthy deer herd is a primary goal of fish and wildlife
management. The use of a limited unit open season on antlerless deer shall be
implemented only after a scientific game management study by the
Department of Fish and Wildlife supports such a season.

(d)(e) Annually, the Department shall update a scientific management
study of the State deer herd. The study shall consider data provided by
Department biologists and citizen testimony taken under subsection (f)(e) of
this section.

(e)(d) Based on the results of the updated management study and citizen
testimony, the Board shall decide whether an antlerless deer hunting season is
necessary and, if so, how many permits are to be issued. If the Board
determines that an antlerless season is necessary, it shall adopt a rule creating
one and the Department shall then administer an antlerless program.
(f) Annually, the Department shall hold regional public hearings to receive testimony and data from concerned citizens about their knowledge and concerns about the deer herd. The Board Department shall identify the regions by rule.

(g) If the Board Department finds that an antlerless season is necessary to maintain the health and size of the herd, the Department shall administer an antlerless deer program. Annually, the Board Department shall determine how many antlerless permits to issue in each wildlife management unit. For a nonrefundable fee of $10.00 for residents and $25.00 for nonresidents, a person may apply for a permit. Each person may submit only one application for a permit. The Department shall allocate the permits in the following manner:

(1) A Vermont landowner, as defined in section 4253 of this title, who owns 25 or more contiguous acres and who applies shall receive a permit for antlerless hunting in the management unit on which the land is located before any are given to people eligible under subdivision (2) of this subsection. If the land is owned by more than one individual, corporation, or other entity, only one permit shall be issued. Landowners applying for antlerless permits under this subdivision shall not, at the time of application or thereafter during the regular hunting season, post their lands except under the provisions of section 4710 of this title. As used in this section, “post” means any signage that would
lead a reasonable person to believe that hunting is restricted on the land. If the
number of landowners who apply exceeds the number of permits for that
district, the Department shall award all permits in that district to landowners by
lottery.

(2) Permits remaining after allocation pursuant to subdivision (1) of this
subsection shall be issued by lottery.

(3) Any permits remaining after permits have been allocated pursuant to
subdivisions (1) and (2) of this subsection shall be issued by the Department
for a $10.00 fee for residents. Ten percent of the remaining permits may be
issued to nonresident applicants for a $25.00 fee.

Sec. 3. 10 V.S.A. § 4082 is amended to read:

§ 4082. VERMONT FISH AND WILDLIFE REGULATIONS

(a) The Board Department may adopt rules, under 3 V.S.A. chapter 25, to
be known as the “Vermont Fish and Wildlife Regulations” for the regulation of
fish and wild game and the taking thereof except as otherwise specifically
provided by law. The rules shall be designed to maintain the best health,
population, and utilization levels of the regulated species and of other
necessary or desirable species that are ecologically related to the regulated
species. The rules shall be supported by investigation and research conducted
by the Department on behalf of the Board.
(b)(1) Except as provided for under subdivision (2) of this subsection, the Board Department annually may adopt rules relating to the management of migratory game birds; and shall follow the procedures for rulemaking contained in 3 V.S.A. chapter 25. For each such rule, the Board Department shall conduct a hearing but, when necessary, may schedule the hearing for a day before the terms of the rule are expected to be determined.

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

(c) The Board Department may set by procedure the annual number of antlerless deer that can be harvested in each Wildlife Management Unit and the annual number of moose that can be harvested in each Wildlife Management Unit without following the procedures for rulemaking contained in 3 V.S.A.
chapter 25. The annual numbers of antlerless deer and moose that can be
harvested shall be supported by investigation and research conducted by the
Department on behalf of the Board. Prior to setting the antlerless deer and
moose permit numbers, the Board Department shall provide a period of not
less than 30 days of public notice and shall conduct at least three public
informational hearings. The public informational hearings may be conducted
simultaneously with the regional antlerless deer meetings required by
10 V.S.A. App. § 2b. The final annual antlerless deer and moose harvest
permit numbers shall be enforceable by the Department under its enforcement
authority in part 4 of this title. The final annual antlerless deer and moose
harvest permit numbers shall be reported to the House Committee on Natural
Resources, Fish, and Wildlife as part of the annual deer report required under
section 4084 of this title. The provisions of 2 V.S.A. § 20(d) (expiration of
required reports) shall not apply to the report to be made under this subsection.
Sec. 4. 10 V.S.A. § 4601 is amended to read:

§ 4601. TAKING FISH; POSSESSION

A person shall not take fish, except in accordance with this part and
regulations of the Board Department, or possess a fish taken in violation of this
part or regulations of the Board Department.
Sec. 5. 3 V.S.A. § 2803 is amended to read:

§ 2803. ADVISORY CAPACITY

(a) All boards, committees, councils, activities, and departments which under this chapter are a part of the Agency shall be advisory only, except as hereinafter provided, and the powers and duties of such boards, committees, councils, activities, and departments, including administrative, policy making, rulemaking, and regulatory functions, shall vest in and be exercised by the Secretary of the Agency.

(b) Notwithstanding subsection (a) of this section or any other provision of this chapter, the Fish and Wildlife Board and the Natural Resources Board shall retain and exercise all powers and functions given to them by law which are of regulatory or quasi-judicial nature, including the power to adopt, amend, and repeal rules and regulations; to conduct hearings; to adjudicate controversies; and to issue and enforce orders, in the manner and to the extent to which those powers are given to those respective boards by law.

Sec. 6. CONFORMING REVISIONS

When preparing the Vermont Statutes Annotated for publication, the Office of Legislative Counsel shall make the following revisions throughout the statutes as needed for consistency with Secs. 1–6 of this act, provided the revisions have no other effect on the meaning of the affected statutes:
(1) replace “Board” with “Department” in 10 V.S.A. §§ 4605, 4701, 4702, 4742a, 4828, 4830, 4861, 4902, and 5001; and

(2) revisions that are substantially similar to those described in subdivision (1) of this section.

Sec. 7. TRANSITION

(a) The Vermont Fish and Wildlife regulations promulgated by the Fish and Wildlife Board and in effect as of the effective date of this act shall remain in effect and have the full force and effect of law until such time as they are repealed or amended by the Department of Fish and Wildlife pursuant to 3 V.S.A. chapter 25.

(b) The terms of the members of the Fish and Wildlife Board as of the effective date of this act shall terminate 90 days after the effective date of this act.

Sec. 8. EFFECTIVE DATE

This act shall take effect on passage.