

OVERVIEW OF PROPOSED LEGISLATION TRANSFORMING THE FISH & WILDLIFE BOARD FROM A RULEMAKING/REGULATORY BOARD INTO AN ADVISORY BOARD

Prepared by Charles Storrow, Leonine Public Affairs, LLP
On Behalf of Vermont Wildlife Coalition, Inc.

High Level Overview

- Transforms Fish and Wildlife Board from a 14 member board, with one member from each county, with all members appoint by the Governor, to a 12 member board, with 4 members appointed by the Governor, 4 by the Speaker of the House, and 4 by the Senate Committee on Committees. In appointing board members the appointing authorities are to consider geographic diversity, candidates history of involvement and dedication to fish, wildlife, conservation and natural resources.
- The transformed Fish & Wildlife Board would not have the authority to set the rules for the taking of fish and wildlife, e.g., hunting seasons, methods of taking fish and game, bag limits, etc.... Instead, the Department of Fish and Wildlife would have that authority.
- However, all proposed rule changes by the Department would be reviewed by the transformed Fish & Wildlife Board as part of the rulemaking process.

Detailed Overview

Bill Section 1--Findings

- Vermont's fish and wildlife are held in trust by the State for the benefit of all Vermonters and are not to be reduced to private ownership. Vermont Constitution, Chapter II, § 67.
- How Vermonters interact with wildlife has changed in recent decades. The percentage of Vermonters who hunt and trap has declined and percentage of Vermonters who observe wildlife without hunting or trapping them has increased.¹

¹ Between 1985 and 2019 resident hunting license sales have declined by 56% (from 47,068 to 20,805).

Bill Section 2—Changes to 10 V.S.A. § 4041, which establishes both the Department of Fish & Wildlife and the Fish & Wildlife Board.

- Amends subsection (a) concerning the Commissioner of Fish & Wildlife to use the same language that is in 10 V.S.A. § 2603 concerning the Commissioner of Forests, Parks & Recreation; to wit:
 - Per 3 V.S.A. § 2851 the Fish & Wildlife Commissioner is to be appointed by the Secretary of ANR, with the approval of the Governor (this is already the case per 10 V.S.A. § 4042, which would be repealed)
 - Per 3 V.S.A. § 2852 the Fish & Wildlife Commissioner is to determine, with the approval of the Secretary of ANR, the Department’s policies, and is to administer the Department’s laws, coordinate the work of the Department’s Divisions (e.g., Wildlife Division, Fisheries Division, Enforcement Division and Outreach Division), and supervise the Department’s staff.
 - Per 3 V.S.A. § 2853 the Fish & Wildlife Commissioner, with the approval of the Secretary of ANR, can transfer appropriations between Department divisions, transfer classified staff, cooperate with the federal government, etc.
- Subsection (b) is amended to transform the Fish & Wildlife Board:
 - 12-member board, as opposed to 14, without the requirement that there be one board member per county.
 - Four members to appointed by, respectively, the Governor, the Speaker of the House and the Senate Committee on Committees.
 - No change to current provision of six-year terms and staggering of appointments so that only the terms of two to three members expire per year.
 - In considering candidates the appointing authority is to consider the need for geographic diversity and a candidate’s history of involvement with and commitment to fish, wildlife, conservation and natural resources.
- A new subsection (c) is added to provide that upon their appointment board members are to be trained in co-existing with wildlife, reducing conflicts between humans and wildlife,² and the impact of climate change on fish and wildlife.

² See e.g., *Coexistence: Living Harmoniously With Wildlife in a Human-Dominated World*, International Fund for Animal Welfare.
https://d1jyxxz9imt9yb.cloudfront.net/resource/255/attachment/original/ifaw_coexistence_report_FINAL.pdf

- A new subsection (d) is added to provide that when the Department starts the rulemaking process by filing a proposed rule with the Secretary of State's office the Department must submit it to the Board. After holding a hearing and taking public comments the Board is to then determine whether the proposed rule "is designed to maintain the best health, population, and utilization levels of the regulated species and of other necessary or desirable species which 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 thinks the rule should be revised it must submit a report to the Department about why it thinks the rule should be revised. The Department would be obligated to consider the Board's report and recommendations and, if it rejects the Board's report and recommendations, say why in writing. The Board's report and the Department's response are to be submitted to LCAR along with the other materials that are required to be submitted to LCAR.

Bill Section 3—Repeal of 10 V.S.A. § 4042, which relates to the appointment of the Commissioner of Fish & Wildlife

Repeals 10 V.S.A. § 4042, which provides "*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.*"

This section is not necessary in light of the amendment to 10 V.S.A. § 4041(a) in Bill Section 2.

Bill Section 4—Changes to 10 V.S.A. § 4081, which establishes state policy concerning the management and regulation of wildlife.

- Deletes language that the Commissioner of Fish & Wildlife must regulate and manage wildlife in accordance with the Fish & Wildlife Board's rules.
- Deletes language that the Fish & Wildlife Board is the state agency charged with carrying out the regulatory oversight of the taking of fish and wildlife.
- Provides that the Department, as opposed to the Board, shall determine whether an antlerless deer season is warranted and, if so, how many permits allowing the taking of antlerless deer are to be issued for each wildlife management unit.

Bill Section 5—Changes to 10 V.S.A. § 4082, which grants the Fish & Wildlife Board rulemaking authority.

- Amends 10 V.S.A. § 4082, which grants the Fish & Wildlife Board the authority to issue rules concerning the taking of fish and game (including migratory game birds), to give the Department that authority instead of the Board. It also gives the Department, as opposed to the Board, the authority to set the number of antlerless deer permits to be issued without having to go through the rulemaking process.

Bill Section 6—Amends 10 V.S.A. § 4601, which prohibits the illegal taking of fish.

- Amends 10 V.S.A. § 4601 to provide that one cannot take fish except in accordance with the Department's, as opposed to the Board's rules.

Bill Section 7—Amends 3 V.S.A. § 2830, which relates to ANR related boards, committees, etc.

- 3 V.S.A. § 2830 provides that all ANR related boards, committees, councils, activities and departments are advisory only, except for the Fish & Wildlife Board and the Natural Resources Board. Bill section 3 would amend this statute to delete the Fish & Wildlife Board as being a non-advisory Board.

Bill Section 8—Transition Language

- Existing Fish & Wildlife rules are to remain in effect until and unless they are revised by the Department.

Bill Section 9—Effective Date—Upon passage

Note: As a "housekeeping" matter "Department" needs to be substituted for "Board" in 10 V.S.A. §§ 4605(e), 4701, 4702, 4742a, 4828, 4830, 4861, 4902, and 5001(b)