

Proposed Legislation Transforming Vermont Fish & Wildlife Board into an Advisory Body

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o/b/o the Vermont Wildlife Coalition, Inc.

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

Sec. 1. FINDINGS

The General Assembly finds that:

(1) It is the policy of the State that:

(A) 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;

(B) 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; and

(C) The Commissioner of Fish and Wildlife is required to safeguard the fish, wildlife, and fur-bearing animals of the State for all of the people of the State.

(2) How the people of Vermont interact, recreate, and appreciate wildlife in Vermont has shifted significantly and quantifiably over recent decades.

(A) The number of Vermonters participating in hunting, fishing, and trapping is steadily declining as evidenced by the reduction in resident license sales.

(B) Since 1985, resident hunting license sales have decreased by 56 percent, resident trapping licenses sales have decreased by 43 percent, and resident fishing license sales have decreased by 23 percent.

(C) Since 2006, U.S. Fish and Wildlife Service data indicate that the number of Vermonters identifying as wildlife watchers has increased to 86 percent of the population, in contrast to 11.5 percent of the population who identify as hunters.

(3) The shift in how the people of Vermont interact, recreate and appreciate wildlife warrants giving the Department of Fish and Wildlife the authority to regulate the taking of fish, wildlife and fur bearing animals of the State and revising the role and responsibilities of the Fish and Wildlife Board.

Sec. 2. 10 V.S.A. § 4041 is amended as follows:

§ 4041 Department of Fish and Wildlife; Fish and Wildlife Board; members, term, chair

~~(a) There is hereby established a Department of Fish and Wildlife. which 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. [This language is based on 10 VSA § 2603 relative to the Department of Forests, Parks and Recreation].**

(b)~~(1)~~ There is hereby established a Fish and Wildlife Board. The Board shall consist of ~~14~~ **12** members, ~~one from each county, appointed by the Governor with the advice and consent of the Senate.~~ **Four members shall be appointed by the Commissioner, four members by the Speaker of the House and four members by the Senate Committee on Committees.** The members of the Board shall be appointed for a term of six years, or 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 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.

(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 co-existence 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 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, 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.

Sec. 3. 10 V.S.A. § 4042 is repealed.

[That statute reads as follows: 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.]

Sec. 4. 10 V.S.A. § 4081 is amended as follows:

§ 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.~~

~~(b)(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.

~~(c)(d)~~ 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) of this section.

~~(d)(e)~~ Based on the results of the updated management study and citizen testimony, the Department Board shall decide whether an antlerless deer hunting season is necessary and if so how many permits are to be issued. If the Department Board determines that an antlerless season is necessary, it shall adopt a rule creating one and the Department shall then administer an antlerless program.

~~(e)(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.

~~(f)(g)~~ If the Department Board 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 Department Board 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:

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Sec. 5. 10 V.S.A. § 4082 is amended as follows:

§ 4082. Vermont Fish and Wildlife Regulations

(a) The **Department Board** 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 which 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 **Department Board** 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 **Department Board** 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 **Department Board** 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 **Department Board** 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 **Department Board** 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 **Department Board** 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. 6. 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 **Department Board**, or possess a fish taken in violation of this part or regulations of the Board.

[Need to substitute “Department” for “Board” in 10 V.S.A. §§ 4605(e), 4701, 4702, 4742a, 4828, 4830, 4861, 4902, 5001(b)]

Sec. 7. 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~~ it 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~~ the boards by law.

Sec. 8. 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. 9. Effective Date

This act shall take effect upon passage.