

1 S.129

2 Introduced by Senator Champion

3 Referred to Committee on

4 Date:

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

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

11 An act relating to the management of fish and wildlife

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

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

14 § 4041. DEPARTMENT OF FISH AND WILDLIFE; FISH AND WILDLIFE  
15 BOARD; MEMBERS, TERM, CHAIR

16 (a) There is hereby established a Department of Fish and Wildlife ~~that shall~~  
17 ~~be administered by the Commissioner.~~ The Department shall be under the  
18 direction and supervision of a Commissioner appointed by the Secretary as  
19 provided in 3 V.S.A. § 2851. In addition to the duties and powers provided  
20 under this chapter, the Commissioner shall have the powers and duties

1 specified in 3 V.S.A. § 2852 and such additional duties as may be assigned to  
2 the Commissioner by the Secretary under 3 V.S.A. § 2853. The Commissioner  
3 shall implement the policy and purposes specified in section 4081 of this title  
4 where appropriate and to the extent that resources of the Department permit.

5 (b)(1) There is hereby established a Fish and Wildlife Board. The Board  
6 shall consist of ~~14~~ 12 members, ~~one from each county, appointed by the~~  
7 ~~Governor with the advice and consent of the Senate.~~ Four members of the  
8 Board shall be appointed by the Commissioner, four members of the Board  
9 shall be appointed by the Speaker of the House, and four members of the  
10 Board shall be appointed by the Committee on Committees. The members of  
11 the Board shall be appointed for a term of six years, or the unexpired portion  
12 thereof, ~~and during their terms shall reside in the county from which they are~~  
13 ~~appointed. In the event a member no longer resides in the county from which~~  
14 ~~he or she was appointed, the Governor shall appoint a member from that~~  
15 ~~county for the unexpired portion of the term.~~ Appointments shall be made in  
16 ~~such~~ a manner that either two or three terms shall expire each year. A member  
17 serving a full six-year term shall not be eligible for reappointment. The  
18 ~~Governor~~ Commissioner shall biennially designate a chair.

19 (2) In order to be appointed to the Board, a person shall apply in writing  
20 to the appointing authority. The appointing authority shall acknowledge, in  
21 writing, the receipt of each application.

1           (3) In considering applicants to the Board, the appointing authority shall  
2           give due consideration to:

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

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

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

10                   (d) Upon the filing of a proposed rule with the Secretary of State pursuant  
11           to 3 V.S.A. § 838, the Department shall submit the proposed rule to the Board  
12           for its review. After a public hearing and an opportunity for the public to  
13           submit written comments, the Board shall consider whether a proposed rule is  
14           designed to maintain the best health, population, and utilization levels of the  
15           regulated species and of other necessary or desirable species that are  
16           ecologically related to the regulated species and whether the rules are  
17           adequately supported by investigation and research conducted by the  
18           Department. If the Board, by majority vote, determines that a proposed rule  
19           should be revised, it shall submit a written report to the Department setting  
20           forth its recommended revisions, and the reasons therefore, within 60 days of  
21           its receipt of a proposed rule. The Board shall include with its report the

1 public comments it received. The Department shall consider fully any  
2 recommendations by the Board and shall issue a written explanation of why it  
3 overruled the Board's arguments and considerations for revising the rule. The  
4 Board's written report and the Department's response thereto shall be included  
5 with the materials submitted to the Legislative Committee on Administrative  
6 Rules under 3 V.S.A. § 841.

7 § 4042. ~~COMMISSIONER; APPOINTMENT~~

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

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

12 § 4081. POLICY

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

19 (2) The Commissioner of Fish and Wildlife shall manage and regulate  
20 the fish and wildlife of Vermont in accordance with the requirements of this  
21 part ~~and the rules of the Fish and Wildlife Board.~~ The protection, propagation

1 control, management, and conservation of fish, wildlife, and fur-bearing  
2 animals in this State are in the interest of the public welfare. The State,  
3 through the Commissioner of Fish and Wildlife, shall safeguard the fish,  
4 wildlife, and fur-bearing animals of the State for the people of the State, and  
5 the State shall fulfill this duty with a constant and continual vigilance.

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

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

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

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

1       ~~(e)~~(e) Annually, the Department shall hold regional public hearings to  
2 receive testimony and data from concerned citizens about their knowledge and  
3 concerns about the deer herd. The ~~Board~~ Department shall identify the regions  
4 by rule.

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

13           (1) A Vermont landowner, as defined in section 4253 of this title, who  
14 owns 25 or more contiguous acres and who applies shall receive a permit for  
15 antlerless hunting in the management unit on which the land is located before  
16 any are given to people eligible under subdivision (2) of this subsection. If the  
17 land is owned by more than one individual, corporation, or other entity, only  
18 one permit shall be issued. Landowners applying for antlerless permits under  
19 this subdivision shall not, at the time of application or thereafter during the  
20 regular hunting season, post their lands except under the provisions of section  
21 4710 of this title. As used in this section, “post” means any signage that would

1 lead a reasonable person to believe that hunting is restricted on the land. If the  
2 number of landowners who apply exceeds the number of permits for that  
3 district, the Department shall award all permits in that district to landowners by  
4 lottery.

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

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

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

12 § 4082. VERMONT FISH AND WILDLIFE REGULATIONS

13 (a) The ~~Board~~ Department may adopt rules, under 3 V.S.A. chapter 25, to  
14 be known as the “Vermont Fish and Wildlife Regulations” for the regulation of  
15 fish and wild game and the taking thereof except as otherwise specifically  
16 provided by law. The rules shall be designed to maintain the best health,  
17 population, and utilization levels of the regulated species and of other  
18 necessary or desirable species that are ecologically related to the regulated  
19 species. The rules shall be supported by investigation and research conducted  
20 by the Department ~~on behalf of the Board~~.

1           (b)(1) Except as provided for under subdivision (2) of this subsection, the  
2 ~~Board~~ Department annually may adopt rules relating to the management of  
3 migratory game birds, and shall follow the procedures for rulemaking  
4 contained in 3 V.S.A. chapter 25. For each ~~such~~ rule, the ~~Board~~ Department  
5 shall conduct a hearing but, when necessary, may schedule the hearing for a  
6 day before the terms of the rule are expected to be determined.

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

18           (c) The ~~Board~~ Department may set by procedure the annual number of  
19 antlerless deer that can be harvested in each Wildlife Management Unit and the  
20 annual number of moose that can be harvested in each Wildlife Management  
21 Unit without following the procedures for rulemaking contained in 3 V.S.A.



1 chapter 25. The annual numbers of antlerless deer and moose that can be  
2 harvested shall be supported by investigation and research conducted by the  
3 Department ~~on behalf of the Board~~. Prior to setting the antlerless deer and  
4 moose permit numbers, the ~~Board~~ Department shall provide a period of not  
5 less than 30 days of public notice and shall conduct at least three public  
6 informational hearings. The public informational hearings may be conducted  
7 simultaneously with the regional antlerless deer meetings required by  
8 10 V.S.A. App. § 2b. The final annual antlerless deer and moose harvest  
9 permit numbers shall be enforceable by the Department under its enforcement  
10 authority in part 4 of this title. The final annual antlerless deer and moose  
11 harvest permit numbers shall be reported to the House Committee on Natural  
12 Resources, Fish, and Wildlife as part of the annual deer report required under  
13 section 4084 of this title. The provisions of 2 V.S.A. § 20(d) (expiration of  
14 required reports) shall not apply to the report to be made under this subsection.

15 Sec. 4. 10 V.S.A. § 4601 is amended to read:

16 § 4601. TAKING FISH; POSSESSION

17 A person shall not take fish, except in accordance with this part and  
18 regulations of the ~~Board~~ Department, or possess a fish taken in violation of this  
19 part or regulations of the ~~Board~~ Department.

1 Sec. 5. 3 V.S.A. § 2803 is amended to read:

2 § 2803. ADVISORY CAPACITY

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

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

17 Sec. 6. CONFORMING REVISIONS

18 When preparing the Vermont Statutes Annotated for publication, the Office  
19 of Legislative Counsel shall make the following revisions throughout the  
20 statutes as needed for consistency with Secs. 1–6 of this act, provided the  
21 revisions have no other effect on the meaning of the affected statutes:

1           (1) replace “Board” with “Department” in 10 V.S.A. §§ 4605, 4701,  
2           4702, 4742a, 4828, 4830, 4861, 4902, and 5001; and

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

5           Sec. 7. TRANSITION

6           (a) The Vermont Fish and Wildlife regulations promulgated by the Fish  
7           and Wildlife Board and in effect as of the effective date of this act shall remain  
8           in effect and have the full force and effect of law until such time as they are  
9           repealed or amended by the Department of Fish and Wildlife pursuant to  
10          3 V.S.A. chapter 25.

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

14          Sec. 8. EFFECTIVE DATE

15          This act shall take effect on passage.