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1 TO THE HONORABLE SENATE:

2 The Committee on Natural Resources and Energy to which was referred
3 Senate Bill No. 213 entitled “An act relating to the regulation of wetlands,
4 river corridor development, and dam safety” respectfully reports that it has
5 considered the same and recommends that the bill be amended by striking out
6 all after the enacting clause and inserting in lieu thereof the following:

7 * * * Short Title * * *

8 **Sec. 1. SHORT TITLE**

9 This act may be cited as the “Climate Change Response and Resiliency
10 Act.”

11 * * * Development in River Corridors * * *

12 **Sec. 2. FINDINGS**

13 The General Assembly finds that for purposes of Secs. 3–11:

14 (1) According to the 2023 National Climate Assessment, the
15 northeastern region of the United States has experienced a 60 percent increase
16 in more extreme precipitation events since 1958, particularly in inland flooding
17 of valleys, where people, infrastructure, and agriculture tend to be
18 concentrated.

19 (2) The 2021 Vermont Climate Assessment highlights that Vermont has
20 seen:

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1 (A) a 21 percent increase in average annual precipitation since 1990;

2 and

3 (B) 2.4 additional days of heavy precipitation since the 1960s.

4 (3) According to the National Oceanic and Atmospheric

5 Administration’s National Centers for Environmental Information, average

6 annual damages from flooding and flood-related disasters between 1980 and

7 2023 exceeds \$30 million, conservatively.

8 (4) According to the Department of Environmental Conservation, 70 to

9 80 percent of all flood-related damages occur within Vermont’s river corridors.

10 (5) According to the Department of Environmental Conservation,

11 only 10 percent of Vermont municipalities, cities, or incorporated villages have

12 adopted full river corridor protections through the Department’s model bylaws.

13 (6) Promoting existing compact settlements, located along Vermont

14 waterways, will require improved flood resilience efforts, as described in the

15 initial Vermont Climate Action Plan of 2021, such as managing flood and

16 fluvial erosion hazards to protect Vermont’s compact settlements, which will

17 be a critical component of a successful climate adaptation response.

18 (7) The State, as recommended in the initial Vermont Climate Action

19 Plan of 2021, should adopt legislation that would authorize the Agency of

20 Natural Resources to revise the Vermont Flood Hazard Area and River

21 Corridor rule to provide the Agency with delegable, Statewide jurisdiction and

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1 permitting authority for new development taking place in mapped river
2 corridors.

3 Sec. 3. DEPARTMENT OF ENVIRONMENTAL CONSERVATION;
4 RIVER CORRIDOR BASE MAP; INFILL MAPPING;
5 EDUCATION AND OUTREACH

6 (a) On or before January 1, 2026, the Department of Environmental
7 Conservation shall amend by procedure the statewide River Corridor Base
8 Map to identify areas suitable for development that are located within existing
9 settlements and that will not cause or contribute to increases in fluvial erosion
10 hazards.

11 (b) Beginning January 1, 2025 and ending January 1, 2027, the Department
12 of Environmental Conservation shall conduct an education and outreach
13 program to consult with and collect input from municipalities, environmental
14 justice focus populations, the Environmental Justice Advisory Council,
15 businesses, property owners, farmers, and other members of the public
16 regarding how State permitting of development in mapped river corridors will
17 be implemented, including potential restrictions on the use of land within
18 mapped river corridors. The Department shall develop educational materials
19 for the public as part of its charge under this section. The Department shall
20 collect input from the public regarding the permitting of development in
21 mapped river corridors as proposed by this act. On or before January 15, 2027,

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1 the Department shall submit to the Senate Committee on Natural Resources
2 and Energy, the House Committee on Environment and Energy, and the
3 Environmental Justice Advisory Council a report that shall include:

4 (1) a summary of the public input it received regarding State permitting
5 of development in mapped river corridors;

6 (2) recommendations, based on the public input collected, for changes to
7 the requirements for State permitting of development in mapped river
8 corridors; and

9 (3) an analysis and summary of State permitting of development in
10 mapped river corridors on environmental justice populations.

11 (c) In addition to other funds appropriated to the Agency of Natural
12 Resources in fiscal year 2025, the amount of \$300,000.00 shall be appropriated
13 from the General Fund to fund two new positions to conduct infill and
14 redevelopment mapping of mapped river corridors under subsection (a) of this
15 section and to conduct the education and outreach required under subsection
16 (b) of this section.

17 Sec. 4. 10 V.S.A. § 752 is amended to read:

18 § 752. DEFINITIONS

19 ~~For the purpose of~~ As used in this chapter:

20 * * *

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1 (a) Rulemaking authority.

2 (1) ~~On or before November 1, 2014, the Secretary shall adopt rules~~
3 ~~pursuant to 3 V.S.A. chapter 25 that establish requirements for the issuance~~
4 ~~and enforcement of permits applicable to:~~

5 ~~(i) uses exempt from municipal regulation that are located within a~~
6 ~~flood hazard area or river corridor of a municipality that has adopted a flood~~
7 ~~hazard bylaw or ordinance under 24 V.S.A. chapter 117; and~~

8 ~~(ii) State owned and operated institutions and facilities that are~~
9 ~~located within a flood hazard area or river corridor~~ On or before January 1,
10 2029, the Secretary shall adopt rules pursuant to 3 V.S.A. chapter 25 that
11 establish requirements for issuing and enforcing permits for:

12 (A) all development within a mapped river corridor in the State; and

13 (B) for development exempt from municipal regulation in flood
14 hazard areas.

15 * * *

16 (b) Required rulemaking content. The rules shall:

17 (1) set forth the requirements necessary to ensure ~~uses~~ that development
18 exempt from municipal regulation are in flood hazard areas is regulated by the
19 State in order to comply with the regulatory obligations set forth under the
20 National Flood Insurance Program.;

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1 (2) be designed to ensure that the State and municipalities meet
2 community eligibility requirements for the National Flood Insurance Program;

3 (3) establish requirements for the permitting of development within the
4 mapped river corridors of the State;

5 (4) provide certain regulatory exemptions for minor development
6 activities in a mapped reiver corridor when the development activities have no
7 adverse environmental effects;

8 (5) establish the requirements and process for a municipality to be
9 delegated the State’s permitting authority for development in a mapped river
10 corridor when the development is not exempt from municipal regulation and
11 when the municipality has adopted an ordinance or bylaw under 24 V.S.A.
12 chapter 117 that has been approved by the Secretary and that meets or exceeds
13 the requirements established under State rule;

14 (6) set forth a process for amending the statewide River Corridor Base
15 Map; and

16 ~~(e)(7) Discretionary rulemaking. The rules required under this section may~~
17 establish requirements that exceed the requirements of the National Flood
18 Insurance Program for ~~uses~~ development exempt from municipal regulation in
19 flood hazard areas, including requirements for the maintenance of existing
20 native riparian vegetation, provided that any rules adopted under this
21 subsection that exceed the minimum requirements of the National Flood

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1 Insurance Program shall be designed to prevent or limit a risk of harm to life,
2 property, or infrastructure from flooding.

3 ~~(d)~~(c) General permit. The rules authorized by this section may establish
4 requirements for a general permit to implement the requirements of this
5 section, including authorization under the general permit to conduct a specified
6 use exempt from municipal regulation without notifying or reporting to the
7 Secretary or an agency delegated under subsection ~~(g)~~(f) of this section. A
8 general permit implementing the requirements of this section shall not be
9 required to be issued by rule.

10 ~~(e)~~(d) Consultation with interested parties. Prior to submitting the rules
11 required by this section to the Secretary of State under 3 V.S.A. § 838, the
12 Secretary shall solicit the recommendations of and consult with affected and
13 interested persons and entities such as: the Secretary of Commerce and
14 Community Development; the Secretary of Agriculture, Food and Markets; the
15 Secretary of Transportation; the Commissioner of Financial Regulation;
16 representatives of river protection interests; representatives of fishing and
17 recreational interests; representatives of the banking industry; representatives
18 of the agricultural community; representatives of the forest products industry;
19 the regional planning commissions; municipal interests; and representatives of
20 municipal associations.

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1 ~~(f)~~(e) Permit requirement. A Beginning on January 1, 2030, a person shall
2 not commence or conduct ~~a use~~ development exempt from municipal
3 regulation in a flood hazard area or commence or conduct any development in
4 a mapped river corridor in a municipality that has adopted a flood hazard area
5 ~~bylaw or ordinance under 24 V.S.A. chapter 117 or commence construction of~~
6 ~~a State owned and operated institution or facility located within a flood hazard~~
7 ~~area or river corridor~~, without a permit issued under the rules required under
8 subsection (a) of this section by the Secretary or by a State agency delegated
9 permitting authority under subsection ~~(g)~~(f) of this section. When an
10 application is filed under this section, the Secretary or delegated State agency
11 shall proceed in accordance with chapter 170 of this title.

12 ~~(g)~~(f) Delegation.

13 (1) The Secretary may delegate to another State agency the authority to
14 implement the rules adopted under this section, to issue a permit under
15 subsection ~~(f)~~(e) of this section, and to enforce the rules and a permit.

16 (2) A memorandum of understanding shall be entered into between the
17 Secretary and a delegated State agency for the purpose of specifying
18 implementation of requirements of this section and the rules adopted under this
19 section, issuance of a permit or coverage under a general permit under this
20 section, and enforcement of the rules and permit required by this section.

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1 (3) Prior to entering a memorandum of understanding, the Secretary
2 shall post the proposed memorandum of understanding on its website for 30
3 days for notice and comment. When the memorandum of understanding is
4 posted, it shall include a summary of the proposed memorandum; the name,
5 telephone number, and address of a person able to answer questions and
6 receive comments on the proposal; and the deadline for receiving comments.
7 A final copy of a memorandum of understanding entered into under this
8 section shall be sent to the chairs of the House ~~Committees on Energy and~~
9 ~~Technology and on Natural Resources, Fish, and Wildlife~~ Committee on
10 Environment and Energy, the Senate Committee on Natural Resources and
11 Energy, and any other committee that has jurisdiction over an agency that is a
12 party to the memorandum of understanding.

13 ~~(h)~~(g) Municipal authority. This section and the rules adopted under it
14 shall not prevent a municipality from adopting substantive requirements for
15 development in a flood hazard area bylaw or ordinance under 24 V.S.A.
16 chapter 117 that are more stringent than the rules required by this section,
17 provided that the bylaw or ordinance shall not apply to uses exempt from
18 municipal regulation.

19 Sec. ~~6~~. 10 V.S.A. § 755 is amended to read:

20 § 755. STATE FLOOD HAZARD AREA STANDARDS; MUNICIPAL
21 EDUCATION; MODEL FLOOD HAZARD AREA

1 BYLAW OR ORDINANCE

2 (a) State flood hazard area standards.

3 (1) On or before January 1, 2026, the Secretary shall adopt rules
4 pursuant to 3 V.S.A. chapter 25 that establish a set of flood hazard area
5 standards for enrollment in the National Flood Insurance Program (NFIP).

6 (2) The rules shall contain flood hazard area standards that meet or
7 exceed the minimum standards of the NFIP by reducing flood risk to new
8 development and ensuring new development does not create adverse impacts
9 to adjacent preexisting development.

10 (3) Any municipality with a municipal flood hazard area bylaw or
11 ordinance shall update their bylaw or ordinance to incorporate the State Flood
12 Hazard Area Standards. Nothing in this section shall prohibit a municipality
13 from adopting a more protective flood hazard standard with language and
14 standards approved by the Agency.

15 (4) On or after January 1, 2028, the State Flood Hazard Areas adopted
16 under subdivision (1) of this subsection shall be the State minimum flood
17 hazard areas standards.

18 (b) Education and assistance. The Secretary, in consultation with regional
19 planning commissions, shall provide ongoing education, technical assistance,
20 and guidance to municipalities regarding the requirements under 24 V.S.A.
21 chapter 117 necessary for compliance with the ~~National Flood Insurance~~

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1 ~~Program~~ (NFIP), including implementation of the State Flood Hazard Area
2 Standards adopted under subsection (a) of this section.

3 (b)(c) Model flood hazard area bylaw or ordinance. The Secretary shall
4 create and make available to municipalities a model flood hazard area bylaw or
5 ordinance for potential adoption by municipalities pursuant to 24 V.S.A.
6 chapter 117 or 24 V.S.A. § 2291. The model bylaw or ordinance shall set forth
7 the minimum provisions necessary to meet the requirements of the ~~National~~
8 ~~Flood Insurance Program~~ NFIP, including implementation of the State Flood
9 Hazard Area Standards adopted under subsection (a) of this section. The
10 model bylaw may include alternatives that exceed the minimum requirements
11 for compliance with the ~~National Flood Insurance Program~~ NFIP and State
12 Flood Hazard Area Standards in order to allow a municipality to elect whether
13 it wants to adopt the minimum requirement or an alternate requirement that
14 further minimizes the risk of harm to life, property, and infrastructure from
15 flooding.

16 (e)(d) Assistance to municipalities with no flood hazard area bylaw or
17 ordinance. The Secretary, in consultation with municipalities, municipal
18 organizations, and regional planning commissions, shall provide education and
19 technical assistance to municipalities that lack a flood hazard area bylaw or
20 ordinance in order to encourage adoption of a flood hazard area bylaw or

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1 ordinance that qualifies the municipality for the ~~National Flood Insurance~~
2 ~~Program~~ (NFIP).

3 Sec. ~~7~~. 24 V.S.A. § 4302(c)(14) is amended to read:

4 (14) To encourage flood resilient communities.

5 (A) New development in identified flood hazard, fluvial erosion, and
6 river corridor protection areas should be avoided. If new development is to be
7 built in such areas, it should not exacerbate flooding and fluvial erosion and
8 should meet or exceed the statewide minimum flood hazard area standards
9 established by rule by the Agency of Natural Resources.

10 * * *

11 Sec. ~~8~~. 24 V.S.A. § 4382(a)(12) is amended to read:

12 (12)(A) A flood resilience plan that:

13 (i) identifies flood hazard and fluvial erosion hazard areas, based
14 on river corridor maps provided by the Secretary of Natural Resources
15 pursuant to 10 V.S.A. § 1428(a) or maps recommended by the Secretary, and
16 designates those areas to be protected, including floodplains, river corridors,
17 land adjacent to streams, wetlands, and upland forests, to reduce the risk of
18 flood damage to infrastructure and improved property; and

19 (ii) recommends policies and strategies to protect the areas
20 identified and designated under subdivision (12)(A)(i) of this subsection and to
21 mitigate risks to public safety, critical infrastructure, historic structures, and

1 municipal investments. These strategies shall include adoption and
2 implementation of the State Flood Hazard Area Standards.

3 (B) A flood resilience plan may reference an existing local hazard
4 mitigation plan approved under 44 C.F.R. § 201.6.

5 Sec. 9. 24 V.S.A. § 4424 is amended to read:

6 § 4424. SHORELANDS; ~~RIVER CORRIDOR PROTECTION AREAS;~~
7 FLOOD OR HAZARD AREA; SPECIAL OR FREESTANDING
8 BYLAWS

9 (a) Bylaws; flood and other hazard areas; ~~river corridor protection.~~ Any
10 municipality may adopt freestanding bylaws under this chapter to address
11 particular hazard areas in conformance with the municipal plan, the State
12 Flood Hazard Area Standards or, for the purpose of adoption of a flood hazard
13 area bylaw, a local hazard mitigation plan approved under 44 C.F.R. § 201.6.
14 Such freestanding bylaws may include the following, which may also be part
15 of zoning or unified development bylaws:

16 (1) Bylaws to regulate development and use along shorelands.

17 (2) Bylaws to regulate development and use in ~~flood areas, river~~
18 ~~corridor protection areas,~~ flood hazard areas or other hazard areas. The

19 following shall apply if flood hazard or other hazard area bylaws are enacted:

20 (A) Purposes.

1 (i) To minimize and prevent the loss of life and property, the
2 disruption of commerce, the impairment of the tax base, and the extraordinary
3 public expenditures and demands on public service that result from flooding,
4 landslides, erosion hazards, earthquakes, and other natural or human-made
5 hazards.

6 (ii) To ensure that the design and construction of development in
7 flood, ~~river corridor protection~~, hazard and other hazard areas are
8 accomplished in a manner that minimizes or eliminates the potential for flood
9 and loss or damage to life and property and ensures new development will not
10 adversely affect existing development in a flood hazard area ~~or that minimizes~~
11 ~~the potential for fluvial erosion and loss or damage to life and property in a~~
12 ~~river corridor protection area.~~

13 (iii) To manage all flood hazard areas designated pursuant to
14 10 V.S.A. § 753.

15 (iv) To make the State and municipalities eligible for federal flood
16 insurance and other federal disaster recovery and hazard mitigation funds as
17 may be available.

18 (B) Contents of bylaws. Except as provided in subsection (c) of this
19 section, flood, ~~river corridor protection area~~, hazard and other hazard area
20 bylaws ~~may~~ **shall**:

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1 (i) ~~Contain standards and criteria that prohibit the placement of~~
2 ~~damaging obstructions or structures, the use and storage of hazardous or~~
3 ~~radioactive materials, and practices that are known to further exacerbate~~
4 ~~hazardous or unstable natural conditions~~ Require compliance with the State
5 Flood Hazard Area Standards established by rule pursuant to 10 V.S.A.
6 § 755(c) and meet all additional requirements under the National Flood
7 Insurance Program as set forth in 44 C.F.R. § 60.3.

8 (ii) ~~Require flood, fluvial erosion, and hazard protection through~~
9 ~~elevation, floodproofing, disaster preparedness, hazard mitigation, relocation,~~
10 ~~or other techniques.~~

11 (iii) ~~Require adequate provisions for flood drainage and other~~
12 ~~emergency measures.~~

13 (iv) ~~Require provision of adequate and disaster-resistant water and~~
14 ~~wastewater facilities.~~

15 (v) ~~Establish other restrictions to promote the sound management~~
16 ~~and use of designated flood, river corridor protection, and other hazard areas.~~

17 (vi) ~~Regulate~~ Regulate all land development in a flood hazard
18 area, ~~river corridor protection area,~~ or other hazard area, except for
19 development that is regulated under 10 V.S.A. § 754.

20 (C) Effect on zoning bylaws. Flood hazard or other hazard area
21 bylaws may alter the uses otherwise permitted, prohibited, or conditional in a

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1 flood hazard area or other hazard area under a bylaw, as well as the
2 applicability of other provisions of that bylaw. Where a flood hazard bylaw, a
3 hazard area bylaw, or both apply along with any other bylaw, compliance with
4 the flood or other hazard area bylaw shall be prerequisite to the granting of a
5 zoning permit. Where a flood hazard area bylaw or a hazard area bylaw but
6 not a zoning bylaw applies, the flood hazard and other hazard area bylaw shall
7 be administered in the same manner as are zoning bylaws, and a flood hazard
8 area or hazard area permit shall be required for land development covered
9 under the bylaw.

10 (D) Mandatory provisions.

11 (i) Except as provided in subsection (c) of this section, all flood
12 hazard and other hazard area bylaws shall provide that no permit for new
13 construction or substantial improvement shall be granted for a flood hazard or
14 other hazard area until after both the following:

15 (I) ~~A~~ a copy of the application is mailed or delivered by the
16 administrative officer or by the appropriate municipal panel to the Agency of
17 Natural Resources or its designee, which may be done electronically, provided
18 the sender has proof of receipt; and

19 (II) ~~Either~~ either 30 days have elapsed following the mailing or
20 the Agency or its designee delivers comments on the application.

1 (b) Membership. The Study Committee on State Administration of the
2 National Flood Insurance Program shall be composed of the following
3 members:

4 (1) one current member of the House of Representatives, appointed by
5 the Speaker of the House;

6 (2) one current member of the Senate, appointed by the Committee on
7 Committees;

8 (3) two members of the Department of Environmental Conservation
9 Rivers Program, appointed by the Governor;

10 (4) two members of Vermont’s Regional Planning Commissions,
11 appointed by the Vermont Association of Planning and Development
12 Agencies; and

13 (5) one member to represent Vermont municipalities, appointed by the
14 Committee on Committees.

15 (c) Powers and duties. The Study Committee on State Administration of
16 the National Flood Insurance Program shall:

17 (1) summarize the existing responsibilities of individual municipalities
18 that are enrolled in the National Flood Insurance Program;

19 (2) assess the ability of individual municipalities enrolled in the
20 National Flood Insurance Program to comply with the program’s minimum
21 standards, identifying the specific barriers to enrollment and compliance;

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1 (3) assess the feasibility of the Department of Environmental
2 Conservation Rivers Program to take on the administrative burden of the
3 National Flood Insurance Program, including an assessment of the various
4 scales with which this could occur;

5 (4) estimate the staffing needs to effectively administer the National
6 Flood Insurance Program for Vermont’s municipalities;

7 (5) recommend how to phase in a proposed state-administered National
8 Flood Insurance Program; and

9 (6) propose to the General Assembly funding sources to support all
10 potential administrative costs for a proposed state-administered National Flood
11 Insurance Program, including the permanent full-time classified staff positions
12 in the Department of Environmental Conservation’s Rivers Program needed to
13 establish a flood hazard area permitting program and a permitting fee for
14 applications to the Department of Environmental Conservation’s Rivers
15 Program and other potential funding sources.

16 (d) Assistance. For purposes of scheduling meetings and administrative
17 support, the Study Committee shall have the assistance of the Office of
18 Legislative Operations. For purposes of providing legal assistance and drafting
19 of legislation, the Study Committee shall have the assistance of the Office of
20 Legislative Counsel. For the purpose of providing fiscal assistance, the Study
21 Committee shall have the assistance of the Joint Fiscal Office.

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1 (e) Report. On or before August 15, 2025, the Study Committee shall
2 submit a written report to the General Assembly with its findings and any
3 recommendations for legislative action. Any recommendation for legislative
4 action shall be as draft legislation.

5 (f) Meetings.

6 (1) The Office of Legislative Counsel shall call the first meeting of the
7 Study Committee.

8 (2) The Committee shall select a chair from among its members at the
9 first meeting.

10 (3) A majority of the membership of the Study Committee shall
11 constitute a quorum.

12 (4) The Study Committee shall cease to exist on December 31, 2025.

13 (g) Compensation and reimbursement.

14 (1) For attendance at meetings during adjournment of the General
15 Assembly, a legislative member of the Study Committee shall be entitled to per
16 diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 23
17 for not more than eight meetings. These payments shall be made from monies
18 appropriated to the General Assembly.

19 (2) Other members of the Study Committee shall be entitled to per diem
20 compensation and reimbursement of expenses as permitted under 32 V.S.A.

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1 § 1010 for not more than eight meetings. These payments shall be made from
2 monies appropriated to the General Assembly.

3 Sec. **11**. TRANSITION; IMPLEMENTATION; APPROPRIATIONS;

4 POSITIONS

5 (a) The Secretary of Natural Resources shall initiate rulemaking, including
6 pre-rulemaking, for the rules required in Sec. 5 of this act, 10 V.S.A. § 754
7 (river corridor development), no later than January 1, 2027. The rules shall be
8 adopted on or before January 1, 2029.

9 (b) Prior to the effective date of the rules required in Sec. 5 of this act,
10 10 V.S.A. § 754 (river corridor development), the Secretary of Natural
11 Resources shall continue to implement the Vermont Flood Hazard Area and
12 River Corridor Rule as those rules existed on July 1, 2024 for development
13 exempt from municipal regulation in flood hazard areas and relevant river
14 corridors until the rules required .

15 (c) The Secretary of Natural Resources shall not require a permit under the
16 rules required by 10 V.S.A. § 754 for development in a flood hazard area or
17 mapped river corridor for development that has the same meaning as
18 “development” under 44 C.F.R. § 59.1 for activities for which:

19 (1) all necessary local, State, or federal permits have been obtained prior
20 to January 1, 2028 and the permit holder takes no subsequent act that would
21 require a permit or registration under 10 V.S.A. chapter 32; or

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1 (3) regulation and management of the water resources of the State,
2 including wetlands, should be guided by science, and authorized activities in
3 water resources and wetlands should have a net environmental benefit to the
4 State.

5 Sec. 13. 10 V.S.A. § 902(13) is added to read:

6 (13) “Dam removal” has the same meaning as in section 1080 of this
7 title.

8 Sec. 14. 10 V.S.A. § 916 is amended to read:

9 § 916. ~~REVISION~~ UPDATE OF VERMONT SIGNIFICANT WETLANDS
10 INVENTORY MAPS

11 ~~The Secretary shall revise the Vermont significant wetlands inventory maps~~
12 ~~to reflect wetland determinations issued under section 914 of this title and~~
13 ~~rulemaking by the panel under section 915 of this title. (a) On or before~~
14 January 1, 2026, and not less than annually thereafter, the Agency of Natural
15 Resources shall update the Vermont Significant Wetlands Inventory (VSWI)
16 maps. The annual updates to the VSWI shall include integration of
17 georeferenced shapefiles or similar files for all verified delineations performed
18 within the State and submitted to the Agency of Natural Resources as part of a
19 permit application, as well as a wetlands determination issued under section
20 914 of this title and rulemaking conducted pursuant to section 915 of this title.
21 The VSWI layer shall include integration of any additional town specific

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1 inventories of otherwise unmapped wetlands performed by consultants on the
2 Agency’s Wetland Consultant List if the consultant has presented the map to a
3 municipality or the Agency of Natural Resources.

4 (b) On or before January 1, 2030, the Secretary of Natural Resources shall
5 complete High Quality Wetlands Inventory (NWI) Plus level mapping for all
6 of the tactical basins in the State. The high-quality mapping shall include a
7 ground truthing component, as recommended by the U.S. Fish and Wildlife
8 Service (USFWS). Once all tactical basins are mapped, the Agency shall
9 evaluate the need for NWI Plus level map updates on a five-year cycle,
10 simultaneously with updates to the corresponding tactical basin plan.

11 Sec. 15. 10 V.S.A. §§ 918 and 919 are added to read:

12 § 918. NET GAIN OF WETLANDS; STATE GOAL; RULEMAKING

13 (a) On or before July 1, 2025, the Secretary of Natural Resources shall
14 amend the Vermont Wetlands Rules pursuant to 3 V.S.A. chapter 25 to clarify
15 that the goal of wetlands regulation and management in the State is the net gain
16 of wetlands to be achieved through protection of existing wetlands and
17 restoration of wetlands that were previously adversely affected. As a condition
18 of a permit for activity in a wetland, the Secretary shall require the net gain of
19 wetlands. This condition shall not apply to wetland, river, and flood plain
20 restoration projects, including dam removals.

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1 (b) The Vermont Wetlands Rules shall prioritize the protection of existing
2 intact wetlands from adverse effects. Where a permitted activity in a wetland
3 will cause more than 5,000 square feet of adverse effects that cannot be
4 avoided, the Secretary shall mandate that the permit applicant restore, enhance,
5 or create wetlands or buffers to compensate for the adverse effects on a
6 wetland. The amount of wetlands to be restored, enhanced, or created shall be
7 calculated, at a minimum, by determining the acreage or square footage of
8 wetlands permanently drained or filled as a result of the permitted activity and
9 multiplying that acreage or square footage by two, to result in ratio of 2:1
10 restoration to wetland loss. Establishment of a buffer zone contiguous to a
11 wetland shall not substitute for the restoration, enhancement, or creation of
12 wetlands. Adverse impacts to wetland buffers shall be compensated for based
13 on the effects of the impact on wetland function.

14 (c) At a minimum, the Wetlands Rules shall be revised to:

15 (1) Require an applicant for a wetland permit that authorizes adverse
16 impacts to more than 5,000 square feet of wetlands to compensate for those
17 impacts through restoration, enhancement, or creation of wetland resources.
18 Wetland, river, and floodplain restoration projects, including dam removal,
19 shall be an allowed use within a wetland under this rule.

20 (2) Incorporate the net gain rule into requirements for permits issued
21 after September 1, 2025.

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- 1 (3) Establish a set of parameters and restoration ratios applicable to
2 permittee-designed restored wetland restoration projects, including a minimum
3 2:1 ratio of restoration to loss to compensate for permanently filled or drained
4 wetlands. These parameters shall include consideration of the following
5 factors:
- 6 (A) the existing level of wetland function at the site prior to
7 mitigation or restoration of wetlands;
- 8 (B) the amount of wetland acreage and wetland function lost as a
9 result of the project;
- 10 (C) how the wetland acreage and functions will be restored at the
11 proposed compensation site;
- 12 (D) the length of time before the compensation site will be fully
13 functional;
- 14 (E) the risk that the compensation project may not succeed;
- 15 (F) the differences in the location of the adversely affected wetland
16 and the wetland subject to compensation that affect the services and values
17 offered; and
- 18 (G) the requirement that permittees conduct five years of post-
19 restoration monitoring for the restored wetlands, at which time the Agency can
20 decide if further action is needed.

1 (d) When amending the Vermont Wetlands Rules under this section, the
2 Secretary shall establish a Vermont in-lieu fee (ILF) compensation program for
3 wetlands impacts that may be authorized as compensation for an adverse effect
4 on a wetland when the permittee cannot achieve restoration. The Secretary
5 may implement a Vermont ILF compensation program through agreements
6 with third-party entities such as the U.S. Army Corps of Engineers or
7 environmental organizations, provided that any ILF monetary compensation
8 authorized under the rules shall be expended on restoration, reestablishment,
9 enhancement, or conservation projects within the State at the HUC 8 level of
10 the adversely affected wetland when practicable.

11 § 919. WETLANDS PROGRAM REPORTS

12 (a) On or before April 30, 2025, and annually thereafter, the Secretary of
13 Natural Resources shall submit to the House Committee on Environment and
14 Energy and to the Senate Committee on Natural Resources and Energy a report
15 on annual losses and gains of significant wetlands in the State. The report shall
16 include:

17 (1) the location and acreage of Class II wetland and buffer losses
18 permitted by the Agency in accordance with section 913 of this title, for which
19 construction of the permitted project has commenced;

20 (2) the acreage of Class II wetlands and buffers gained through permit-
21 related enhancement and restoration;

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1 (3) the number of site visits and technical assistance calls conducted by
2 the Agency of Natural Resources, the number of permits processed by the
3 Agency, and any enforcement actions that were taken by the Agency or the
4 Office of the Attorney General in the previous year for violations of this
5 chapter; and

6 (4) an updated mitigation summary of the extent of wetlands restored
7 on-site compared with compensation performed off-site, in-lieu fees paid, or
8 conservation.

9 (b) On or before April 30, 2027, and every five years thereafter, the
10 Agency of Natural Resources shall submit to the House Committee on
11 Environment and Energy and to the Senate Committee on Natural Resources
12 and Energy a comprehensive report on the status of wetlands in the State. The
13 report shall include:

14 (1) an analysis of historical trends of wetlands, including data analyzing
15 the projects for which wetland permits were issued by county and tactical
16 basin;

17 (2) the results of each NWI Plus Mapping Project, including net acres
18 mapped, dominant vegetative composition, connected tributaries, locations of
19 confirmed ground truthing, if applicable, and any other hydrologic soil or
20 vegetative observations or trends noted; and

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1 (3) relevant updates related to Class I and Class II wetlands to include
2 additional wetlands identified under these categories, their composition and
3 general characteristics, potential threats, patterns of use, and other unique
4 features.

5 Sec. 16. 10 V.S.A. § 1274(a) is amended to read:

6 (a) Notwithstanding any other provision or procedure set forth in this
7 chapter, if the Secretary finds that any person has discharged or is discharging
8 any waste or damaging the ecological functions of wetlands in violation of this
9 chapter or chapter 37 of this title, or that any person has failed to comply with
10 any provisions of any order or permit issued in accordance with this chapter or
11 chapter 37 of this title, the Secretary may bring suit in the Superior Court in
12 any county where the discharge, damage to wetlands, or noncompliance has
13 occurred to enjoin the discharge ~~and to~~ obtain compliance, and mandate
14 restoration of damaged wetlands. The suit shall be brought by the Attorney
15 General in the name of the State. The court may issue a temporary injunction
16 or order in any such proceedings and may exercise all the plenary powers
17 available to it in addition to the power to:

18 (1) Enjoin future discharges.

19 (2) Order the design, construction, installation, or operation of pollution
20 abatement facilities or alternate waste disposal systems.

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1 (ii) was partially breached; and

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

3 (C) “Dam” ~~shall~~ does not mean:

4 (i) barriers or structures created by beaver or any other wild

5 animal as that term is defined in section 4001 of this title;

6 (ii) transportation infrastructure that has no normal water storage

7 capacity and that impounds water only during storm events;

8 (iii) an artificial barrier at a stormwater management structure that

9 is regulated by the Agency of Natural Resources under chapter 47 of this title;

10 (iv) an underground or elevated tank to store water otherwise

11 regulated by the Agency of Natural Resources;

12 (v) an agricultural waste storage facility regulated by the Agency

13 of Agriculture, Food and Markets under 6 V.S.A. chapter 215; or

14 (vi) any other structure identified by the Department by rule.

15 (7) “Federal dam” means:

16 (A) a dam owned by the United States; or

17 (B) a dam subject to a Federal Energy Regulatory Commission

18 license or exemption.

19 (8) “Intake structure” means a dam that is constructed and operated for

20 the primary purposes of minimally impounding water for the measurement and

21 withdrawal of streamflow to ensure use of the withdrawn water for

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1 snowmaking, potable water, irrigation, or other purposes approved by the
2 Department.

3 (9) “Nonfederal dam” means a dam that is not a federal dam.

4 (10) “Dam removal” means all actions needed to eliminate the risk of
5 dam failure-related inundation below the dam and may include partial or
6 complete structural removal.

7 § 1081. JURISDICTION OF DEPARTMENT ~~AND PUBLIC UTILITY~~
8 COMMISSION

9 (a) Powers and duties. Unless otherwise provided, the powers and duties
10 authorized by this chapter shall be exercised by the Department, ~~except that the~~
11 ~~Public Utility Commission shall exercise those powers and duties over~~
12 ~~nonfederal dams and projects that relate to or are incident to the generation of~~
13 ~~electric energy for public use or as a part of a public utility system~~ **of**
14 **Environmental Conservation. Nonfederal dams at which the generation of**
15 **electric energy is subject to licensing jurisdiction under the Federal Power Act,**
16 **16 U.S.C. chapter 12, subchapter 1, and the dam structure is regulated**
17 **separately from electric generation shall not be under the jurisdiction of the**
18 **Public Utility Commission Department.**

19 (b) Transfer of jurisdiction. ~~Jurisdiction over a nonfederal dam is~~
20 ~~transferred from the Department to the Public Utility Commission when the~~
21 ~~Public Utility Commission receives an application for a certificate of public~~

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1 ~~good for electricity generation at that dam.~~ Jurisdiction over a federal dam is
2 transferred to the Department when the license or exemption for a federal dam
3 expires or is otherwise lost; ~~when a certificate of public good is revoked or~~
4 ~~otherwise lost; or when the Public Utility Commission denies an application~~
5 ~~for a certificate of public good.~~

6 (c) Transfer of records. ~~Upon transfer of jurisdiction as set forth in~~
7 ~~subsection (b) of this section and upon written request, the State agency having~~
8 ~~former jurisdiction over a dam shall transfer copies of all records pertaining to~~
9 ~~the dam to the agency acquiring jurisdiction~~ Upon transfer of jurisdiction of
10 any dam from the Public Utility Commission to the Department, the Public
11 Utility Commission shall transfer copies of all records pertaining to the subject
12 dam, including record drawings, construction drawings, engineering
13 investigations and analyses, photographs, inspection reports, design,
14 permitting, and emergency action planning documents and any other files
15 pertaining to the subject dam, to the Department in digital and hardcopy format
16 acceptable to the Department within 30 days following the jurisdictional
17 transfer.

18 § 1082. AUTHORIZATION

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

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1 or other liquid after construction or alteration, or remove, breach, or otherwise
2 lessen the capacity of an existing nonfederal dam that is or was capable of
3 impounding more than 500,000 cubic feet within or along the borders of this
4 State where land in this State is proposed to be overflowed, or at the outlet of
5 any body of water within this State, unless authorized by the ~~State agency~~
6 ~~having jurisdiction so to do~~ Department, provided that an application for
7 activities that require authorization under 30 V.S.A. § 248 also shall be
8 approved by the Public Utility Commission. However, in the matter of flood
9 control projects where cooperation with the federal government is provided for
10 by the provisions of section 1100 of this title, that section shall control.

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

15 (c) An intake structure in existence on July 1, 2018 that continues to
16 operate in accordance with a valid Department permit or approval that contains
17 requirements for inspection and maintenance subject to section 1105 of this
18 title shall have a rebuttable presumption of compliance with the requirements
19 of this chapter and rules adopted under this chapter, provided that no
20 presumption of compliance shall apply if one or both of the following occur on
21 or after July 1, 2018:

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1 (1) the owner or operator of the intake takes an action that requires
2 authorization under this section; or

3 (2) the Department issues an order under section 1095 of this title
4 directing reconstruction, repair, removal, breaching, draining, or other action it
5 considers necessary to improve the safety of the dam.

6 § 1083. APPLICATION

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

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

12 (2) the approximate area to be overflowed and the approximate number
13 of or any change in the number of cubic feet of water to be impounded;

14 (3) the plans and specifications to be followed in the construction,
15 remodeling, reconstruction, altering, lowering, raising, removal, breaching, or
16 adding to;

17 (4) any change in operation and maintenance procedures; and

18 (5) other information that the ~~State agency having jurisdiction~~
19 Department considers necessary to review the application.

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

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1 § 1084. DEPARTMENT OF FISH AND WILDLIFE; INVESTIGATION

2 The Commissioner of Fish and Wildlife shall investigate the potential
3 effects on fish and wildlife habitats of any proposal subject to section 1082 of
4 this title and shall certify the results to the ~~State agency having jurisdiction~~
5 Department prior to any hearing or meeting relating to the determination of
6 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~~ Department shall give notice to the legislative
10 body of each municipality in which the dam is located and to all interested
11 persons. The Department shall provide notice of and an opportunity for public
12 comment in accordance with chapter 170 of this title.

13 ~~(1) The Department shall proceed in accordance with chapter 170 of this~~
14 ~~title.~~

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

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1 ~~given at least 10 days before the hearing to interested persons by posting in the~~
2 ~~municipal offices of the towns in which the project will be completed and by~~
3 ~~publishing in a local newspaper.~~

4 § 1086. DETERMINATION OF PUBLIC GOOD; CERTIFICATES

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

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

12 (2) scenic and recreational values;

13 (3) fish and wildlife;

14 (4) forests and forest programs;

15 (5) [Repealed.]

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

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

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

- 1 (9) the creation of any public benefits;
- 2 (10) attainment of the Vermont water quality standards;
- 3 (11) any applicable State, regional, or municipal plans;
- 4 (12) municipal grand lists and revenues; and

5 (13) **public safety; and**

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

10 (b) If the ~~State agency having jurisdiction~~ Department finds that the project
11 proposed under section 1082 of this title will serve the public good, and, in
12 case of any waters designated by the Secretary as outstanding resource waters,
13 will preserve or enhance the values and activities sought to be protected by
14 designation, the agency shall issue its order approving the application. The
15 order shall include conditions for attainment of water quality standards, as
16 determined by the Agency of Natural Resources, and such other conditions as
17 the ~~agency having jurisdiction~~ Department considers necessary to protect any
18 element of the public good listed in subsection (a) of this section. Otherwise it
19 shall issue its order disapproving the application.

20 (c) The ~~State agency having jurisdiction~~ Department shall provide the
21 applicant and interested persons with copies of its order.

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

7 § 1087. REVIEW OF PLANS AND SPECIFICATIONS

8 For any proposal subject to authorization under section 1082 of this title, the
9 ~~State agency having jurisdiction~~ Department shall **employ require an engineer**
10 to investigate the property, review the plans and specifications, and make
11 additional investigations as the ~~State agency having jurisdiction~~ Department
12 considers necessary to ensure that the project adequately provides for the
13 public safety. **The engineer conducting an investigation under this section**
14 **shall be an employee of the Department or shall be operating under the**
15 **supervision of the Department as an independent consultant hired by either the**
16 **Department or the project proponent.** The engineer shall report ~~his or her~~ the
17 engineer's findings to the ~~State agency having jurisdiction~~ Department.

18 § 1089. EMPLOYMENT OF ENGINEER

19 **With the approval of the Governor, the State agency having jurisdiction**
20 **may employ an engineer to investigate the property, review the plans and**
21 **specifications, and make such additional investigation as the State agency shall**

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1 ~~deem necessary, and such engineer shall report to the State agency his or her~~
2 ~~findings in respect thereto~~ The Department shall employ engineers to perform
3 the duties required under this chapter to adequately provide for public safety.

4 § 1090. CONSTRUCTION SUPERVISION

5 The construction, alteration, or other action authorized in section 1086 of
6 this title shall be supervised by an engineer employed by the applicant. Upon
7 completion of the authorized project, the engineer shall ~~certify~~ provide
8 confirmation to the ~~agency having jurisdiction~~ Department that the project has
9 been completed in ~~conformance~~ general accordance with the approved plans
10 and specifications and dam order conditions.

11 § 1091. LIABILITY FOR DAM FAILURE

12 (a) The person owning legal title to a dam shall be responsible and
13 liable for damage to property of others or injury to persons, including loss
14 of life resulting from the operation, failure, or misoperation of a dam.

15 (b) Compliance with the requirements of this chapter or rules adopted
16 under this chapter by a person owning legal title to a dam shall not relieve
17 from or lessen the responsibility of the person owning legal title to the
18 dam from any damages to persons or property caused by defects of the
19 dam, nor shall the Department of Environmental Conservation be held
20 liable by reason of any inspections, technical documents, or permits issued
21 for the dam.

1 § 1095. UNSAFE DAM; PETITION; HEARING; EMERGENCY

2 (a) On receipt of a petition signed by ~~no~~ not fewer than ~~ten~~ 10 interested
3 persons or the legislative body of a municipality, the ~~State agency having~~
4 ~~jurisdiction~~ Department shall, or upon its own motion it may, institute
5 investigations by an engineer as described in section 1087 of this title
6 regarding the safety of any existing nonfederal dam or portion of the dam of
7 any size. The ~~agency~~ Department may fix a time and place for hearing and
8 shall give notice in the manner it directs to all interested persons. The engineer
9 shall present his or her findings and recommendations at the hearing. After the
10 hearing, if the Department finds that the nonfederal dam or portion of the dam
11 as maintained or operated is unsafe or is a menace to people or property above
12 or below the dam, it shall issue an order directing reconstruction, repair,
13 removal, breaching, draining, or other action it considers necessary to improve
14 the safety of the dam sufficiently to protect life and property as required by the
15 ~~State agency having jurisdiction~~ Department.

16 (b) If, upon the expiration of ~~such~~ a date as may be ordered, the person
17 owning legal title to ~~such~~ the dam or the owner of the land on which the dam is
18 located has not complied with the order directing the reconstruction, repair,
19 breaching, removal, draining, or other action of ~~such~~ the unsafe dam, the ~~State~~
20 ~~agency having jurisdiction~~ Department may petition the Superior Court in the
21 county in which the dam is located to enforce its order or exercise the right of

1 eminent domain to acquire the rights that may be necessary to effectuate a
2 remedy as the public safety or public good may require. If the order has been
3 appealed, the court may prohibit the exercise of eminent domain by the ~~State~~
4 ~~agency having jurisdiction~~ Department pending disposition of the appeal.

5 (c) If, upon completion of the investigation described in subsection (a) of
6 this section, the ~~State agency having jurisdiction~~ Department considers the dam
7 to present an imminent threat to human life or property, it shall take whatever
8 action it considers necessary to protect life and property and subsequently shall
9 conduct the hearing described in subsection (a) of this section.

10 § 1099. APPEALS

11 (a) Appeals of any act or decision of the Department under this chapter
12 shall be made in accordance with chapter 220 of this title.

13 (b) ~~Appeals from actions or orders of the Public Utility Commission may~~
14 ~~be taken in the Supreme Court in accord with 30 V.S.A. § 12.~~

15 * * *

16 § 1105. INSPECTION OF DAMS

17 (a) Inspection; schedule. All nonfederal dams in the State shall be
18 inspected according to a schedule adopted by rule by the ~~State agency having~~
19 ~~jurisdiction over the dam~~ Department.

20 (b) Dam inspection. A nonfederal dam in the State shall be inspected under
21 one or both of the following methods:

1 (1) The ~~State agency having jurisdiction over a dam~~ Department may
2 employ an engineer to make periodic inspections of nonfederal dams in the
3 State to determine their condition and the extent, if any, to which they pose a
4 possible or probable threat to life and property.

5 (2) The ~~State agency having jurisdiction~~ Department shall adopt rules
6 pursuant to 3 V.S.A. chapter 25 to require an adequate level of inspection by
7 an independent engineer.

8 (c) Dam safety reports. If a dam inspection report is completed by the
9 ~~State agency having jurisdiction, the agency~~ Department, the Department shall
10 provide the person owning legal title to the dam or the owner of the land on
11 which the dam is located with a copy of the inspection report and shall make
12 all inspection reports available on the Department website for public review.
13 For dams owned by the State, the Department shall provide the inspection
14 report to the designated point of contact for the dam at the State entity owning
15 the dam and make the information available to the public on the Department
16 website.

17 (d) Notice of unsafe State dam. Notwithstanding the timing for submission
18 of a dam safety report under subsection (c) of this section, if the Department
19 determines that a State dam is unsafe and in need of repair or removal, the
20 Department shall immediately notify the designated point of contact of the

1 State entity that owns the dam and make this information available to the
2 public on the Department website.

3 § 1106. ~~UNSAFE DAM~~ SAFETY REVOLVING LOAN FUND

4 (a) There is hereby established a special fund to be known as the Vermont
5 ~~Unsafe Dam~~ Safety Revolving Loan Fund that shall be used to provide ~~grants~~
6 ~~and loans to municipalities, nonprofit entities, and private individuals~~ low- or
7 zero-interest loans, including subsidized loans as established under subsection
8 (c) of this section and the rules adopted under section 1110 of this title,
9 pursuant to rules adopted by the Agency of Natural Resources, for the
10 reconstruction, repair, removal, breaching, draining, or other action necessary
11 to reduce the ~~threat risk~~ of a dam ~~or portion of a dam determined to be unsafe~~
12 ~~pursuant to section 1095 of this chapter.~~

13 (b) Funds from the Dam Safety Revolving Loan Fund shall be available for
14 both emergency and nonemergency projects. To be eligible for a Dam Safety
15 Loan, the dam shall meet the conditions associated with the funding type:

16 (1) Emergency funding. To provide emergency funding for critical,
17 time-sensitive temporary safety or risk reduction measures such as reservoir
18 drawdown, partially or fully breaching the dam, stabilization or buttressing of
19 the dam, including engineering and emergency action planning activities. To
20 be eligible for emergency funding, the dam must meet the following criteria:

1 (A) The dam must be under the regulatory jurisdiction of the DEC
2 Dam Safety Program, including dams owned by the State of Vermont.

3 (B) The dam must be in need of critical time-sensitive safety or risk
4 reduction measures in order to protect public safety and property, or be a dam
5 found to be unsafe or a menace to public safety under section 1095 of this title.
6 The Dam Safety Program shall be able to access the fund on behalf of owners
7 in cases of emergency, immediate need, or in the case of unwilling or unable
8 dam owners.

9 (2) Nonemergency funding. For permanent safety or risk reduction
10 projects such as repair, rehabilitation, or removal, including engineering,
11 analyses, design, and construction. To be eligible for nonemergency funding,
12 the dam must meet the following criteria:

13 (A) The dam must be under the regulatory jurisdiction of the DEC
14 Dam Safety Program, excluding dams owned by the State of Vermont.

15 (B) The dam must be classified as a significant or high-hazard
16 potential dam and in fair, poor, or unsatisfactory condition based on the last
17 periodic or comprehensive inspection.

18 (C) For funding for nonemergency repair or rehabilitation projects,
19 the dam owner shall provide an operation and maintenance plan and dam
20 safety compliance schedule as well as financial information to show sufficient

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1 resources are available to maintain the dam and comply with the dam safety
2 rules after the completion of repairs or the rehabilitation project.

3 (D) For funding for nonemergency construction, the applicant shall
4 provide proof that applicable local, State, and federal permits have been
5 obtained, including the State Dam Safety Order.

6 **(E) To be eligible for nonemergency funding, an alternatives**
7 **analysis of dam repair, rehabilitation, and removal options that considers**
8 **floodplain and wetland restoration, water quality, aquatic organism**
9 **passage, public recreation opportunities, and costs shall be completed,**
10 **pursuant to the rule adopted by the Department.**

11 **(F) Under this subdivision (b)(2), only engineering, analysis,**
12 **design, and construction that in result removal of a dam are eligible for**
13 **loan subsidy.**

14 **[Alternative subdivisions (E) and F:**

15 **(E) To be eligible for nonemergency funding, an alternatives**
16 **analysis of dam repair, rehabilitation, and removal options that considers**
17 **an evaluation of risk reduction, dam safety and environmental permitting**
18 **considerations, and costs shall be completed, pursuant to the rule adopted**
19 **by the Department.**

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1 **(F) Under this subdivision (b)(2), only engineering, analysis,**
2 **design, and construction that result in acceptable risk reduction are**
3 **eligible for loan subsidy.]**

4 (c) The Fund created by this section shall be established and held separate
5 and apart from any other funds or monies of the State and shall be used and
6 administered exclusively for the purposes set forth in this section. The funds
7 shall be invested in the same manner as permitted for investment of funds
8 belonging to the State or held in the Treasury. The Fund shall consist of the
9 following:

10 (1) ~~Such~~ such sums as may be appropriated or transferred thereto from
11 time to time by the General Assembly, the Emergency Board, or the Joint
12 Fiscal Committee during such times as the General Assembly is not in
13 session-;

14 (2) ~~Principal~~ principal and interest received from the repayment of loans
15 made from the Fund-;

16 (3) ~~Capitalization~~ capitalization grants and awards made to the State by
17 the United States of America for the purposes for which the Fund has been
18 established-;

19 (4) ~~Interest~~ interest earned from the investment of Fund balances-;

20 (5) ~~Private~~ private gifts, bequests, and donations made to the State for
21 the purposes for which the Fund has been established-; and

1 (6) ~~Other~~ other funds from any public or private source intended for use
2 for any of the purposes for which the Fund has been established.

3 ~~(e)~~(d) The Secretary may bring an action under this subsection or other
4 available State and federal laws against the owner of the dam to seek
5 reimbursement to the Fund for all loans made from the Fund pursuant to this
6 section.

7 (e)(1) Annually, on or before January 31, the Department shall report to the
8 House Committee on Environment and Energy and the Senate Committee on
9 Natural Resources and Energy regarding operation and administration of the
10 Dam Safety Program. The report shall include:

11 (A) details on all emergency and nonemergency loans made from the
12 Dam Safety Fund during the previous year;

13 (B) a description of each project funded from the Dam Safety Fund,
14 including dam name, town and waterbody in which the dam is located, hazard
15 classification, dam condition, details of the repair or removal, year of the last
16 and next Department inspection, project cost, loan amount, and repayment
17 terms;

18 (C) for emergency loans, justification for the emergency and an
19 explanation why action was needed to be undertaken immediately using State
20 funds; and

21 (D) a projection of loan repayment income to the fund.

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- 1 (A) the siting, design, construction, reconstruction, enlargement,
2 modification, or alteration of a dam;
- 3 (B) operation and maintenance of a dam;
- 4 (C) inspection, monitoring, record keeping, and reporting;
- 5 (D) repair, breach, or removal of a dam;
- 6 (E) application for authorization under section 1082 of this title; and
- 7 (F) the development of an emergency action plan for a dam,
8 including guidance on how to develop an emergency action plan, the content of
9 a plan, and when and how an emergency action plan should be updated;
- 10 (3) criteria for the hazard potential classification of dams in the State;
- 11 (4) a process by which a person owning legal title to a dam or a person
12 owning the land on which the dam is located shall register a dam and record
13 the existence of the dam in the lands records; ~~and~~
- 14 (5) requirements for the person owning legal title to a dam or the person
15 owning the land on which the dam is located to conduct inspections of the
16 dam; **and**
- 17 (6) requirements for access to financing and subsidy from the Dam
18 Safety Revolving Loan Fund, including the requirement that an alternatives
19 analysis be performed by an engineering consultant hired by either the dam
20 owner or the Department.

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1 § 1111. ~~NATURAL RESOURCES ATLAS; DAM STATUS~~

2 ~~Annually on or before January 1, the Public Utility Commission shall~~
3 ~~submit to the Department updated inventory information from the previous~~
4 ~~calendar year for dams under the jurisdiction of the Public Utility Commission.~~

5 [Repealed.]

6 Sec. ~~19~~. 2018 Acts and Resolves No. 161, Sec. 2, as amended by 2023 Acts

7 and Resolves No. 79, Sec. 1, is further amended to read:

8 Sec. 2. DAM REGISTRATION PROGRAM REPORT

9 On or before January 1, ~~2025~~ 2026, the Department of Environmental
10 Conservation shall submit a report to the House Committees on ~~Natural~~
11 ~~Resources, Fish, and Wildlife~~ Environment and Energy and on Ways and
12 Means and the Senate Committees on Natural Resources and Energy and on
13 Finance. The report shall contain:

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

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

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

20 (4) an evaluation of any other dam safety concerns related to dam
21 registration.

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1 Sec. **20**. 2018 Acts and resolves No. 161, Sec. 3, as amended by 2023 Acts
2 and resolves No. 79, Sec. 2, is further amended to read:

3 Sec. 3. ADOPTION OF RULES

4 The Secretary of Natural Resources shall adopt the rules required under
5 10 V.S.A. § 1110 as follows:

6 (1) the rules required under 10 V.S.A. § 1110(1) (exemptions),
7 § 1110(3) (emergency action plan), § 1110(4) (hazard potential classification),
8 § 1110(5) (dam registration), and § 1110(6) (dam inspection) shall be adopted
9 on or before July 1, 2020; and

10 (2) the rules required under 10 V.S.A. § 1110(2) (dam design standards)
11 shall be adopted on or before July 1, ~~2024~~ 2025.

12 Sec. **21**. DAM SAFETY DIVISION POSITIONS

13 In addition to other funds appropriated to the Agency of Natural Resources
14 in fiscal year 2025, \$350,000.00 is appropriated to the Agency for the purposes
15 of funding three new permanent full-time classified positions in the Dam
16 Safety Division of the Department of Environmental Conservation.

17 Sec. **22**. STUDY COMMITTEE ON DAM EMERGENCY **OPERATIONS**

18 PLANNING

19 (a) Creation. There is created the Study Committee on Dam Emergency
20 **Operations** Planning to review and recommend how to improve regional
21 emergency action planning for hazards caused by dam failure, including how

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1 to shift responsibility for emergency planning from individual municipalities to
2 regional authorities, how to improve regional implementation of dam
3 emergency response plans, and how to fund dam emergency action planning at
4 the regional level.

5 (b) Membership. The Study Committee on Dam Emergency **Operations**
6 Planning shall be composed of the following members:

7 (1) one current member of the House of Representatives, who shall be
8 appointed by the Speaker of the House;

9 (2) one current member of the Senate, who shall be appointed by the
10 Committee on Committees;

11 (3) one member of the Department of Environmental Conservation Dam
12 Safety Program, who shall be appointed by the Governor;

13 (4) one member of the Public Utility Commission, who shall be
14 appointed by the Speaker of the House;

15 (5) two members representing regional planning commissions in the
16 State, who shall be appointed by the Committee on Committees;

17 (6) one member of the Division of Emergency Management, who shall
18 be appointed by the Governor;

19 (7) **two legal owners of a dam, one of whom shall own a dam capable of**
20 **generating electricity,** who shall be appointed by the Speaker upon

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1 recommendation of the Dam Safety Program of the Department of
2 Environmental Conservation; and

3 (8) one or more emergency management director or incident commander
4 from a municipality with experience in developing and carrying out an
5 emergency operation plan.

6 (c) Powers and duties. The Study Committee on Dam Emergency
7 Operations Planning shall:

8 (1) identify those dams in the State that are classified as high-hazard
9 dams that also have a significant possibility of flooding populated areas;

10 (2) summarize the existing responsibilities of individual municipalities
11 to prepare for and implement existing emergency response plans, including
12 how those responsibilities are funded and whether placing responsibility with
13 individual municipalities is appropriate;

14 (3) identify the regional planning commissions in which a dam
15 identified under subdivision (1) of this subsection are located;

16 (4) recommend the content for a regional emergency action plan for
17 each dam identified under subdivision (1) of this subsection, including
18 identifying necessary evacuations, how evacuees will be sheltered and
19 provided care, and the location of emergency management centers for each
20 dam;

1 (5) recommend who should prepare a regional emergency action plan
2 for each dam identified under subdivision (1) of this subsection, including the
3 basis for the recommendation and the role that regional planning commissions
4 should play in the preparation of the plans;

5 (6) estimate the cost of the production of regional emergency action
6 plans for dams; and

7 (7) estimate the cost for regional planning commissions and
8 municipalities to implement an emergency action plan, including a
9 recommended source of the funding.

10 (d) Assistance. For purposes of scheduling meetings and administrative
11 support, the Study Committee shall have the assistance of the Office of
12 Legislative Operations. For purposes of providing legal assistance and drafting
13 of legislation, the Study Committee shall have the assistance of the Office of
14 Legislative Counsel. For the purpose of providing fiscal assistance, the Study
15 Committee shall have the assistance of the Joint Fiscal Office.

16 (e) Report. On or before December 15, 2024, the Study Committee shall
17 submit a written report to the General Assembly with its findings and any
18 recommendations for legislative action. Any recommendation for legislative
19 action shall be submitted as draft legislation.

20 (f) Meetings.

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1 **jurisdiction and may require a license from FERC to operate. By**
2 **December 31, 2024, the Public Utility Commission, in coordination with**
3 **the Department of Environmental Conservation, shall file petitions for a**
4 **Declaratory Order from FERC to determine whether projects currently**
5 **under the Public Utility Commission’s jurisdiction falls under FERC’s**
6 **hydroelectric licensing jurisdiction. The Public Utility Commission shall**
7 **provide notice to the dam owner when a petition is filed with FERC.**

8 Sec. 24. TRANSITION; DAMS

9 (a) On or before July 1, 2028, the Department of Environmental
10 Conservation shall assume jurisdiction under 10 V.S.A. chapter 43 of all dams
11 within the jurisdiction of the Public Utility Commission as of July 1, 2024.

12 (b) On or before January 15, 2026 and annually thereafter until the
13 Department of Environmental Conservation has assumed jurisdiction under 10
14 V.S.A. chapter 43 over all dams from the Public Utility Commission, the
15 Department of Environmental Conservation shall report to the Senate
16 Committee on Natural Resources and Energy and the House Committee on
17 Environment and Energy regarding progress in preparation for transfer of
18 jurisdiction of the dams from the Public Utility Commission to the Department
19 of Environmental Conservation.

20 (c) Notwithstanding the effective date of Sec. 18 of this act (transfer of dam
21 safety jurisdiction), the Public Utility Commission shall retain jurisdiction over

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1 dams within its control as of July 1, 2024 until the Department of
2 Environmental Conservation assumes the jurisdiction of each dam as required
3 by subsection (a) of this section. While the Public Utility Commission
4 continues to exercise authority under 10 V.S.A. Chapter 43, as it existed on
5 June 30, 2024, the Public Utility Commission shall apply the dam design
6 standard rules as adopted by the Department of Environmental Conservation.

7 (d) The rulemaking required under Sec. 18 (dam safety transfer) of this act
8 under 10 V.S.A. §1110(6) and (7) shall be completed on or before July 1,
9 2027.

10 (e) Funding from the Dam Safety Revolving Fund, as amended by Sec. 18
11 of this act (dam safety transfer) shall be available for nonemergency use upon
12 the completion of rulemaking required under 10 V.S.A. §1110(6) and (7).

13 * * * Basin Planning * * *

14 Sec. 25. 10 V.S.A. § 1253(d) is amended to read:

15 (d)(1) Through the process of basin planning, the Secretary shall determine
16 what degree of water quality and classification should be obtained and
17 maintained for those waters not classified by the Board before 1981 following
18 the procedures in sections 1254 and 1258 of this title. Those waters shall be
19 classified in the public interest. The Secretary shall prepare and maintain an
20 overall surface water management plan to assure that the State water quality
21 standards are met in all State waters. The surface water management plan shall

1 include a schedule for updating the basin plans. The Secretary, in consultation
2 with regional planning commissions and the Natural Resources Conservation
3 Council, shall revise all 15 basin plans and update the basin plans on a five-
4 year rotating basis. On or before January 15 of each year, the Secretary shall
5 report to the House Committees on Agriculture, Food Resiliency, and Forestry
6 and on ~~Natural Resources, Fish, and Wildlife~~ Environment and Energy and to
7 the Senate Committees on Agriculture and on Natural Resources and Energy
8 regarding the progress made and difficulties encountered in revising basin
9 plans. The report shall include a summary of basin planning activities in the
10 previous calendar year, a schedule for the production of basin plans in the
11 subsequent calendar year, and a summary of actions to be taken over the
12 subsequent three years. The provisions of 2 V.S.A. § 20(d) (expiration of
13 required reports) shall not apply to the report to be made under this subsection.

14 (2) In developing a basin plan under this subsection, the Secretary shall:

15 (A) identify waters that should be reclassified outstanding resource
16 waters or that should have one or more uses reclassified under section 1252 of
17 this title;

18 (B) identify wetlands that should be reclassified as Class I wetlands;

19 (C) identify projects or activities within a basin that will result in the
20 protection and enhancement of water quality;

21 * * *

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1 (J) provide for public notice of a draft basin plan; ~~and~~

2 (K) provide for the opportunity of public comment on a draft basin

3 plan; and

4 (L) identify opportunities to mitigate impacts of severe precipitation

5 events on communities through implementation of nature-based restoration

6 projects or practices that increase natural flood water attenuation and storage.

7 * * * Expanded Polystyrene Foam * * *

8 Sec. 26. 10 V.S.A. chapter 47, subchapter 2B is added to read:

9 Subchapter 2B. Expanded Polystyrene Foam

10 § 1321. DEFINITIONS

11 As used in this subchapter:

12 (1) “Buoy” means any float or marker that is attached to a mooring

13 anchor and either is suitable for attachment to a boat through the use of a

14 pennant or other device or facilitates the attachment of the boat to the mooring

15 anchor.

16 (2) “Dock” means an unenclosed structure secured to land, land under

17 waters, or a mooring or a floating structure that is used for mooring boats or

18 for recreational activities, such as a swimming, fishing, or sunbathing platform.

19 A dock includes a structure that is partially enclosed or has two or more levels.

20 (3) “Encapsulated” means a protective covering or physical barrier

21 between the polystyrene device and the water.

1 (4) “Expanded polystyrene foam” means a thermoplastic petrochemical
2 material utilizing the styrene monomer that is processed according to multiple
3 techniques, including fusion of polymer spheres, injection molding, form
4 molding, and extrusion-blow molding.

5 (5) “Floating structure” means a structure constructed on or in a water of
6 the State that is supported by flotation and is secured in place by a piling or
7 mooring anchor, including boathouses, fueling structures, floating homes,
8 marinas, walkways, or boarding platforms.

9 (6) “Mooring anchor” means any anchor or weight that is designed to:

10 (A) rest on the land under water or be buried in the land under water;

11 (B) be attached to a buoy or floating structure by a chain, rope, or
12 other mechanism; and

13 (C) be left in position permanently or on a seasonal basis.

14 § 1322. INSTALLATION, REPAIR, REMOVAL, AND SALE OF BUOYS,

15 DOCKS, OR FLOATING STRUCTURES

16 (a) Encapsulation required. Expanded polystyrene foam used for flotation,
17 including buoys, docks, or floating structures, shall be encapsulated by a
18 protective covering or shall be designed to prevent the expanded polystyrene
19 foam from disintegrating into the water.

20 (b) Prohibition; unencapsulated polystyrene and open-cell (beaded)

21 polystyrene; repair. No person shall use unencapsulated polystyrene or open-

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1 cell (beaded) polystyrene for the installation of a new buoy, dock, or floating
2 structure on the waters of the State. Unencapsulated polystyrene materials and
3 open-cell beaded polystyrene shall not be used for the repair of buoys, docks,
4 or floating structures on waters of the State.

5 (c) Methods of encapsulation.

6 (1) Encapsulation of a buoy, dock, or floating structure required under
7 subsection (a) of this section shall completely cover or be a physical barrier
8 between the expanded polystyrene foam and the water. Small gaps up to 0.75-
9 inch-diameter ballast holes are permitted in the physical barrier or covering
10 provided they are 0.1 percent or less of the square footage of the buoy, dock, or
11 floating structure.

12 (2) All materials and methods of encapsulation shall provide an
13 effective physical barrier between the expanded polystyrene foam and the
14 water for a period not less than 10 years. Any fasteners used to hold
15 encapsulation materials together shall be effectively treated or be of a form
16 resistant to corrosion and decay.

17 (d) Disposal. Irreparable encapsulated polystyrene, unencapsulated
18 polystyrene, and irreparable encapsulated open-cell (beaded) polystyrene used
19 for flotation, including buoys, docks, or floating structures, shall be properly
20 disposed of in an approved manner.

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1 (e) Sale or distribution. No person shall sell, offer for sale, or otherwise
2 distribute for compensation within the State dock floats, mooring buoys, or
3 anchor or navigation markers made, in whole or in part, from expanded
4 polystyrene foam that is:

5 (1) not wholly encapsulated or encased within a more durable material;

6 or

7 (2) open-cell (beaded) polystyrene, including materials that are
8 encapsulated and unencapsulated.

9 § 1323. NUISANCE

10 The use of unencapsulated polystyrene as a flotation device in waters of the
11 State, including in any dock system, float, mooring system, or buoy, is
12 declared a nuisance and public health hazard and may be prosecuted as
13 provided in the Vermont Revised Statutes.

14 § 1324. RULEMAKING

15 The Secretary may adopt rules to implement the requirements of this
16 subchapter.

17 Sec. 27. APPROPRIATIONS

18 The amount of \$50,000.00 shall be appropriated from the General Fund to
19 the Department of Environmental Conservation to support education and
20 outreach regarding the requirements and prohibitions for the use of expanded
21 polystyrene foam or open-cell (beaded) polystyrene in waters of the State.

1 * * * Floodplain Management; Use Value Appraisal Program * * *

2 Sec. 28. STUDY COMMITTEE ON ENROLMENT OF FLOODPLAIN

3 MANAGEMENT LAND IN USE VALUE APPRAISAL; REPORT

4 (a) Creation. There is created the Study Committee on Enrolling

5 Floodplain Management Land in the Use Value Appraisal Program to

6 determine whether or how to authorize the enrollment of land designated for

7 floodplain management in the Use Value Appraisal (UVA) Program.

8 (b) Membership. The Study Committee shall be composed of the

9 following members:

10 (1) one current member of the House of Representatives, who shall be

11 appointed by the Speaker of the House;

12 (2) one current member of the Senate, who shall be appointed by the

13 Committee on Committees;

14 (3) the Director of Property Valuation and Review or designee;

15 (4) the Director of the Rivers Program within the Watershed

16 Management Division at the Department of Environmental Conservation or

17 designee;

18 (5) the Secretary of Agriculture, Food and Markets or designee;

19 (6) a member of the Current Use Advisory Board, who shall be

20 appointed by the Speaker of the House; and

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1 (7) a member of a statewide environmental organization, who shall be
2 appointed by the Committee on Committees.

3 (c) Powers and duties. The Study Committee shall evaluate the following
4 questions:

5 (1) whether and why real property managed to provide flood mitigation
6 or flood resilience services should or should not be authorized to enroll in the
7 UVA Program; and

8 (2) if the Study Committee recommends that real property that provides
9 flood mitigation or flood resilience services should be allowed to enroll in the
10 UVA Program, what should be the criteria for enrollment, what should be the
11 use value rate for qualifying enrolled real property, and what should be the
12 timeline for enrollment.

13 (d) Assistance. The Study Committee shall have the administrative,
14 technical, legal, and fiscal assistance of the Department of Taxes.

15 (e) Report. On or before January 15, 2025, the Study Committee shall
16 submit a written report to the Senate Committees on Finance and on Natural
17 Resources and Energy and the House Committees on Ways and Means and on
18 Environment and Energy with its findings and any recommendations for
19 legislative action, including proposed legislative language.

20 (f) Meetings.

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1 (2) under Sec. 25 (basin planning), the requirement shall be effective for
2 updated Tactical Basin Plans that commence on or after January 1, 2025; and
3 (3) in Sec. 26 (expanded polystyrene foam requirements), 10 V.S.A.
4 § 1324 (ANR rulemaking) shall take effect on passage.

5

6

7

8

9

10 (Committee vote: _____)

11

12

Senator _____

13

FOR THE COMMITTEE