

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

S.213

Introduced by Senators Bray, Baruth, Clarkson, Gulick, Hardy, Harrison,
Hashim, McCormack, Perchlik, Vyhovsky, Watson, Westman
and White

Referred to Committee on

Date:

Subject: Conservation and development; wetlands; river corridors; dam safety

Statement of purpose of bill as introduced: This bill proposes to amend
provisions related to wetlands, river corridor development, and dam safety.

The bill would establish as State policy that wetlands shall be regulated and
managed to produce a net gain of wetlands acreage. The Secretary of Natural
Resources would be required to amend wetlands rules to incorporate the net
gain policy. The bill would require the Vermont Significant Wetlands
Inventory maps to be updated and revised annually. The bill would also
require amendment to the existing Vermont Flood Hazard Area and River
Corridor Rule to adopt requirements for issuing and enforcing permits for
development within a flood hazard area or a mapped river corridor in the State.

In addition, the bill would amend the Unsafe Dam Revolving Fund to be the
Dam Safety Revolving Fund to provide loans for emergency and
nonemergency funding of dam repair. The bill also provides that the owner of
a dam or the owner of land on which a dam is located shall be held strictly,

1 jointly, and severally liable for harm caused by the breach of a dam, provided
2 that the dam has been classified as a significant or high hazard potential dam or
3 the person who owns legal title to a dam or the owner of land on which a dam
4 is located is not in full compliance with dam safety rules.

5 An act relating to the regulation of wetlands, river corridor development,
6 and dam safety

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

8 * * * Wetlands * * *

9 Sec. 1. 10 V.S.A. § 901 is amended to read:

10 § 901. WATER RESOURCES AND WETLANDS MANAGEMENT

11 POLICY

12 It is hereby declared to be the policy of the State that:

13 (1) the water resources of the State shall be protected; regulated; and,
14 where necessary, controlled under authority of the State in the public interest
15 and to promote the general welfare;

16 (2) the wetlands of the State shall be protected, regulated, and restored
17 so that Vermont achieves a net gain of wetlands acreage; and

18 (3) regulation and management of the water resources of the State,
19 including wetlands, should be guided by science, and authorized activities in

1 water resources and wetlands should have a net environmental benefit to the
2 State.

3 Sec. 2. 10 V.S.A. § 916 is amended to read:

4 § 916. ~~REVISION~~ UPDATE OF VERMONT SIGNIFICANT WETLANDS
5 INVENTORY MAPS

6 ~~The Secretary shall revise the Vermont significant wetlands inventory maps~~
7 ~~to reflect wetland determinations issued under section 914 of this title and~~
8 ~~rulemaking by the panel under section 915 of this title.~~

9 (a) On or before January 1, 2026, and ~~no less than~~ annually thereafter, the Agency
10 of

11 Natural Resources shall update the Vermont Significant Wetlands Inventory

12 (VSWI) maps ~~and the Wetlands Advisory mapping layers for the Agency of~~

13 Natural Resources' Natural Resources Atlas and as a shapefile on the Vermont

14 Geodata Portal. ~~administered by the Agency.~~ The annual updates to the VSWI shall
15 include integration of

16 georeferenced shapefiles or similar files for all verified delineations performed

17 within the State and submitted to the Agency of Natural Resources as part of a

18 permit application, as well as a wetlands determination issued under section

19 914 of this title and rulemaking conducted pursuant to section 915 of this title.

20 The Wetland Advisory layer shall include integration of any additional town

21 specific inventories performed by consultants on the Agency's Wetland

22 Consultant List if the consultant has presented the map to a municipality or the

23 Agency of Natural Resources.

1 **(b) The Secretary of Natural Resources shall provide public notice of**
2 **changes to the VSWI map in the watershed where changes to the map are**
3 **made by posting notice in each town clerk’s office in the municipality where**
4 **wetland map changes are proposed, by publishing notice of the changes in**
5 **local newspapers and other media sources within the municipality, and by**
6 **posting notice of the updated map to the Environmental Notice Bulletin. ~~The~~**
7 **~~Secretary shall not be required to provide notification to individual persons.~~**
8 **~~Secretary shall not be required to provide notification to individual persons.~~**

96 **(c) On or before January 1, 2030, the Secretary of Natural Resources shall**
107 **complete High Quality National Wetlands Inventory (NWI) Plus level**
118 **mapping for all of the tactical basins in the State. The high-quality mapping**
129 **shall include a ground truthing component, ~~as recommended by the U.S. Fish and~~**
 ~~Wildlife Service (USFWS) that is the best available practice.~~

1310 **(d) Once all tactical basins are mapped, ~~updates shall occur~~the Agency shall**
 ~~evaluate the need for tactical basin map updates~~ on a five-year
1411 **cycle simultaneously with updates to the corresponding tactical basin plan.**

1512 **(e) To assist in funding the mapping, the Secretary of Natural Resources**
1613 **shall seek to leverage State funds with federal funds and private funding, with**
1714 **assistance from nongovernmental partners if possible. If the Secretary of**
1815 **Natural Resources does not obtain funding from federal funds or private**
1916 **funding, the Secretary shall document any effort prior to ongoing effort to**
2017 **obtain federal or private funding.**

1 Sec. 3. 10 V.S.A. §§ 918 and 919 are added to read:

2 § 918. NET GAIN OF WETLANDS; ~~STATE GOAL;~~ RULEMAKING

3 (a) On or before July 1, 2025, the Secretary of Natural Resources shall
4 amend the Vermont Wetlands Rules to clarify that the goal of wetlands
5 regulation and management in the State is the net gain of wetlands to be
6 achieved through protection of existing wetlands and restoration of previously
7 developed wetlands. As a condition of a permit for activity in a wetland, the
8 Secretary shall require the net gain of wetlands.

9 (b) The Vermont Wetlands Rules shall prioritize the protection of existing
10 intact wetlands. Where permitted activity within a wetland will cause adverse
11 effects that cannot be avoided, the Secretary shall mandate that the permit
12 applicant compensate for any adverse effects on wetlands through restoration,
enhancement, preservation, or creation of wetlands and buffers, or payment into an in-
lieu-fee program or mitigation bank. ~~restore, enhance, or create wetlands or buffers to~~
compensate for

13 ~~adverse effects on a wetland. When a permitted activity results in the permanent~~
14 12 ~~filling or draining of wetland area, the amount of wetlands to be restored,~~

15 13 enhanced, or created shall be calculated, at a minimum, by determining the

16 14 acreage or square footage of wetland ~~areas adversely affected filled or drained~~
under ~~by~~ the permitted

17 15 activity and multiplying the number of ~~adversely affected filled or drained~~ acres or
square feet

18 18 by two, to result in a ratio of 2:1 restoration to ~~disturbance~~ loss. ~~Establishment of a~~

19 19 ~~buffer zone contiguous to a wetland shall not substitute for the restoration,~~
20 20 ~~buffer zone contiguous to a wetland shall not substitute for the restoration,~~

21 21 ~~buffer zone contiguous to a wetland shall not substitute for the restoration,~~

~~22 — enhancement, or creation of wetlands. The Agency shall establish
in rule a requirement that permittees compensate for
impacts to wetland buffers when those impacts result
in adverse effects to the associated wetland. Adverse
effects on wetland buffers~~

~~23 —~~

~~24 — shall also be restored, enhanced, or created at a ratio of 2:1 restoration to~~

~~25 —~~

~~26 — disturbance, as established on a case by case, per project basis.~~

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

2 ~~(1) Require an applicant for a wetlands permit to compensate for any
3 ~~unavoidable wetland losses by restoring, enhancing, or creating wetlands at a~~
4 ~~2:1 ratio of wetland area replaced to wetland area lost. Wetland loss means the~~
5 ~~permanent draining or filling of wetland area. restore and enhance~~~~

6 ~~any loss of wetlands caused by the project that is subject to the permit~~
7 ~~application.~~

8 ~~(2) Incorporate the net gain rule into existing general permits and into~~
9 ~~requirements for permits issued after July 1, 2025.~~

10 ~~(3) Establish a clear set of criteria the Agency must review when approving a~~
11 ~~compensation plan. set of parameters and ratios for the restoration,~~
12 ~~enhancement, and creation of permittee designed~~

13 ~~restored wetlands, at not less than a 2:1 ratio, which shall include consider, at a~~
14 ~~minimum, the following factors:~~

15 ~~(A) the existing level of wetland function at the site prior to~~
16 ~~mitigation or restoration of wetlands;~~

17 ~~(B) the amount of wetland and wetland function lost as a result of the~~
18 ~~project;~~

19 ~~(C) how the wetland amounts and functions will be restored at the~~
20 ~~proposed compensation site;~~

21 ~~(D) the length of time before the compensation site will be fully~~
22 ~~restored.~~

29 ~~functional;~~

30 _____

31 ~~(E) the risk that the compensation project may not succeed;~~

32 _____

33 ~~(F) the differences in the location of the adversely affected wetland~~

34 _____

35 ~~and the wetland subject to compensation that affect the services and values~~

36 _____

37 ~~offered; and~~

1 ~~(4G) the~~ The Wetland Rules will be revised to require requirement that
2 permittees conduct five years of post-
3 restoration monitoring for the restored wetlands, at which time the Agency can
4 decide if further action is needed.

4 ~~— (d) When amending the Vermont Wetlands Rules under this section, the~~
5 ~~—~~
6 ~~— Secretary shall establish a Vermont in lieu fee (ILF) compensation program for~~
7 ~~—~~
8 ~~— wetlands impacts that may be authorized as compensation for an adverse effect~~
9 ~~—~~
10 ~~— on a wetland when the permittee cannot achieve restoration.~~ The Secretary

8 may implement a Vermont ILF compensation program through agreements
9 with third-party entities such as the U.S. Army Corps of Engineers or
10 environmental organizations, provided that any ILF monetary compensation
11 authorized under the rules shall be expended on restoration, reestablishment,
12 enhancement, or conservation projects within the State at the Hydrologic Unit Code
13 (HUC) 12 level of
14 the adversely affected wetland when practicable.

14 § 919. WETLANDS PROGRAM REPORT

15 On or before April 30, 2025 and annually thereafter, the Agency of Natural
16 Resources shall submit to the House Committee on Environment and Energy
17 and to the Senate Committee on Natural Resources and Energy a report on the
18 status of the wetlands in the State. The report shall include:

19 (1) the acreage, location, and vegetative composition of Class II
20 wetlands and buffers impacted; the Class II wetlands and buffers that were

restored; the Class II wetlands converted to other uses, including permanent

1 development and cropland; and an assessment of the functionality of any
2 created wetlands over the past year compared with the previous five-year
3 period;

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

7 (3) the number of site visits and technical assistance calls conducted by
8 the Agency of Natural Resources, the number of permits processed by the
9 Agency, and any enforcement actions that were taken by the Agency or the
10 Attorney General's office in the previous year;

11 (4) an analysis of historical trends of wetlands, including data analyzing
12 the projects for which wetland permits were issued by sector;

13 (5) the results of each VSWI Mapping Project, including additional
14 acres mapped, dominant vegetative composition, connected tributaries,
15 locations of confirmed ground truthing, if applicable, and any other hydrologic
16 soil or vegetative observations or trends noted; and

17 (6) relevant updates related to Class I and Class II wetlands to include
18 additional wetlands identified under these categories, their composition and
19 general characteristics, potential threats, patterns of use, and other unique
20 features.

1 Sec. 4. 10 V.S.A. § 1274(a) is amended to read:

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

14 (1) Enjoin future discharges.

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

17 (3) Order the restoration of damaged wetlands. Wetlands damaged in
18 violation of chapter 37 of this title may be ordered restored, enhanced, or
19 created.

20 (4) Order the removal of all wastes discharged and the restoration of
21 water quality.

1 ~~(4)~~(5) Fix and order compensation for any public property destroyed,
2 damaged, or injured or any aquatic or terrestrial biota harmed or destroyed.
3 Compensation for fish taken or destroyed shall be deposited into the Fish and
4 Wildlife Fund.

5 ~~(5)~~(6) Assess and award punitive damages.

6 ~~(6)~~(7) Levy civil penalties not to exceed \$10,000.00 a day for each day
7 of violation.

8 ~~(7)~~(8) Order reimbursement to any agency of federal, State, or local
9 government from any person whose discharge caused governmental
10 expenditures.

11 Sec. 5. APPROPRIATIONS

12 In addition to other funds appropriated to the Agency of Natural Resources
13 in fiscal year 2025, the amount of \$1,000,000.00 shall be appropriated from the
14 General Fund, of which \$500,000.00 shall be used to fund wetlands mapping
15 required under this act, and \$500,000.00 shall be used to hire additional
16 Agency of Natural Resources staff as necessary to comply with the
17 requirements of Secs. 1–4 of this act.

18 * * * Development in River Corridors * * *

19 Sec. 6. 10 V.S.A. § 752 is amended to read:

20 § 752. DEFINITIONS

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

* * *

(2) “Development,” for the purposes of flood hazard area management and regulation, ~~shall have~~ has the same meaning as “development” under 44 C.F.R. § 59.1.

(3) “Flood hazard area” ~~shall have~~ has the same meaning as “area of special flood hazard” under 44 C.F.R. § 59.1.

* * *

~~(8) “Uses exempt from municipal regulation” means land use or activities that are exempt from municipal land use regulation under 24 V.S.A. chapter 117. [Repealed.]~~

* * *

(13) “Mapped river corridor” means a river corridor drawn and adopted by the Secretary of Natural Resources as part of the statewide River Corridor Base Map Layer in accordance with the Flood Hazard Area and River Corridor Protection Procedure for rivers and streams with a watershed area greater than two square miles.

Sec. 7. 10 V.S.A. § 754 is amended to read:

§ 754. FLOOD HAZARD AREA AND MAPPED RIVER CORRIDOR
~~RULES; USES EXEMPT FROM MUNICIPAL REGULATION~~

(a) Rulemaking authority.

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

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

7 (ii) ~~State owned and operated institutions and facilities that are~~
8 ~~located within a flood hazard area or river corridor~~ On or before January 1,
9 2026, the Secretary shall adopt rules pursuant to 3 V.S.A. chapter 25 that
10 establish requirements for issuing and enforcing permits for development
11 within a flood hazard area or a mapped river corridor in the State.

12 * * *

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

14 (1) set forth the requirements necessary to ensure ~~uses exempt from~~
15 ~~municipal regulation are~~ development is regulated by the State in order to
16 comply with the regulatory obligations set forth under the National Flood
17 Insurance Program;

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

20 (3) establish the requirements and process for a municipality to be

21
22 delegated the State's permitting authority for development in a flood hazard

1 area.

42 (3) establish the requirements and process ~~area~~ or mapped river corridor that is not
exempt from municipal regulation

2 ~~when the municipality has adopted a flood hazard bylaw or ordinance under~~

3 ~~24 V.S.A. chapter 117 that has been approved by the Secretary and that meets~~

43 ~~or exceeds the requirements established under State rule; and~~

54 (4)(5) set forth a process for amending the statewide River Corridor Base

65 Map to identify areas within designated centers suitable for infill and

76 redevelopment that will not cause or contribute to increases in fluvial erosion

87 hazards.

98 (c) Discretionary rulemaking. The rules may establish requirements that

109 exceed the requirements of the National Flood Insurance Program ~~for uses~~

110 exempt from municipal regulation, including requirements for the maintenance

1211 of existing native riparian vegetation, provided that any rules adopted under

1312 this subsection that exceed the minimum requirements of the National Flood

1413 Insurance Program shall be designed to prevent or limit a risk of harm to life,

1514 property, or infrastructure from flooding.

16 * * *

17 (f) Permit requirement. A Beginning on July 1, 2026, a person shall not

18 commence or conduct a ~~use exempt from municipal regulation~~ development in

19 a flood hazard area or mapped river corridor ~~in a municipality that has adopted~~

20 a flood hazard area bylaw or ordinance under 24 V.S.A. chapter 117 or

21 commence construction of a State owned and operated institution or facility

1 ~~located within a flood hazard area or river corridor~~, without a permit issued
2 under the rules required under subsection (a) of this section by the Secretary or by a
3 municipality or
4 by a State agency delegated permitting authority under subsection (g) of this
5 section. When an application is filed under this section, the Secretary or
6 delegated State agency shall proceed in accordance with chapter 170 of this
7 title. When a municipality is the permitting authority, the municipality shall provide
8 notice of the permit application and decision consistent with the procedures outlined in
9 10 V.S.A. § 7713.

7 * * *

8 Sec. 8. TRANSITION; IMPLEMENTATION

9 (a) The Secretary of Natural Resources shall adopt the rules required in
10 Sec. 7 of this act, 10 V.S.A. § 754, on or before January 1, 2026. The effective
11 date of the rules shall be July 1, 2026.

12 (b) Prior to the effective date of the rules required in Sec. 7 of this act,
13 10 V.S.A. § 754, the Secretary of Natural Resources shall continue to
14 implement the Vermont Flood Hazard Area and River Corridor Rule for
15 development that is exempt from municipal regulation.

16 (c) The Secretary of Natural Resources shall not require a permit under
17 10 V.S.A. § 754 for development in a flood hazard area or mapped river
18 corridor for development that has the same meaning as “development” under
19 44 C.F.R. § 59.1 for activities for which:

1 (1) all necessary local, State, or federal permits have been obtained prior
2 to July 1, 2026 and the permit holder takes no subsequent act that would
3 require a permit or registration under 10 V.S.A. chapter 32; or

4 (2) a complete application for all applicable local, State, and federal
5 permits has been submitted on or before July 1, 2026, provided that the
6 applicant does not subsequently file an application for a permit amendment
7 that would require a permit under 10 V.S.A. chapter 32 and that substantial
8 construction of the impervious surface or cleared area commences within two
9 years following the date on which all applicable local, State, and federal
10 permits become final.

11 * * * Dam Safety * * *

12 Sec. 9. 10 V.S.A. § 1095 is amended to read:

13 § 1095. UNSAFE DAM; PETITION; ~~HEARING~~; EMERGENCY

14 (a) On receipt of a petition signed by ~~no~~ not fewer than ~~ten~~ 10 interested
15 persons or the legislative body of a municipality, the ~~State agency having~~
16 ~~jurisdiction~~ Department shall, or upon its own motion it may, institute
17 investigations by an engineer as described in section 1087 of this title
18 regarding the safety of any existing nonfederal dam or portion of the dam of
19 any size. ~~The agency may fix a time and place for hearing and shall give~~
20 ~~notice in the manner it directs to all interested persons. The engineer shall~~
21 ~~present his or her findings and recommendations at the hearing. After the~~

1 ~~hearing, if~~ If the agency finds that the nonfederal dam or portion of the dam as
2 maintained or operated is unsafe or is a menace to people or property above or
3 below the dam, it shall issue an order directing reconstruction, repair, removal,
4 breaching, draining, or other action it considers necessary to improve the safety
5 of the dam sufficiently to protect life and property as required by the State
6 agency having jurisdiction.

7 (b) If, upon the expiration of ~~such a~~ a date as may be ordered, the person
8 owning legal title to ~~such the~~ the dam or the owner of the land on which the dam is
9 located has not complied with the order directing the reconstruction, repair,
10 breaching, removal, draining, or other action of ~~such the~~ the unsafe dam, the ~~State~~
11 ~~agency having jurisdiction may petition the Superior Court in the county in~~
12 ~~which the dam is located to enforce its order or exercise the right of eminent~~
13 ~~domain to acquire the rights that may be necessary to effectuate a remedy as~~
14 ~~the public safety or public good may require. If the order has been appealed,~~
15 ~~the court may prohibit the exercise of eminent domain by the State agency~~
16 ~~having jurisdiction pending disposition of the appeal~~ Department may take
17 further enforcement action, including the levying of fines for noncompliance.

18 (c) If, upon completion of the investigation described in subsection (a) of
19 this section, the ~~State agency having jurisdiction~~ Department considers the dam
20 to present an imminent threat to human life or property, it shall take whatever

1 action it considers necessary to protect life and property ~~and subsequently shall~~
2 ~~conduct the hearing described in subsection (a) of this section.~~

3 Sec. 10. 10 V.S.A. § 1105 is amended to read:

4 § 1105. INSPECTION OF DAMS

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

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

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

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

17 (c) Dam safety reports. If a dam inspection report is completed by the
18 ~~State agency having jurisdiction~~ Department, the ~~agency~~ Department shall
19 provide the person owning legal title to the dam or the owner of the land on
20 which the dam is located with a copy of the inspection report and shall make
21 all inspection reports available on the Department website for public review.

1 Sec. 11. 10 V.S.A. § 1106 is amended to read:

2 § 1106. ~~UNSAFE DAM~~ SAFETY REVOLVING LOAN FUND

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

12 (b) ~~At a minimum, Funds from the Dam Safety Revolving Loan Fund shall be~~
~~available for both emergency and nonemergency projects. To be eligible for a~~
~~Dam Safety Loan, the dam shall~~
13 Meet the conditions associated with the funding type all of the following conditions:

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

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

| 20 (B) ~~To be eligible, a~~The dam must be in danger of imminent failure that
21 would harm persons or property, require immediate risk reduction measures to

1 protect persons or property downstream, or be a dam found to be unsafe or a
2 menace to public safety under section 1095 of this title. The Dam Safety
3 Program shall be able to access the fund on behalf of owners in cases of
4 emergency, immediate need, or in the case of unwilling or unable dam owners.

5 (C) Only time-sensitive, temporary safety and risk reduction
6 measures are eligible for a loan subsidy for emergency funding issued under
7 this subdivision (b)(1).

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

11 (A) ~~The dam must be Dams-~~under the regulatory jurisdiction of the DEC
Dam Safety
12 Program, excluding dams owned by the State of Vermont.

13 (B) ~~To be eligible, a~~The dam must be classified as a significant or high
14 hazard potential dam and ~~be~~ in fair, poor, or unsatisfactory condition based on the
15 last periodic or comprehensive inspection.

16 (C) For repair or rehabilitation projects, the dam owner shall provide
17 an operation and maintenance ~~plan~~ and dam safety compliance schedule as well as
18 financial information to show sufficient resources are available to maintain the
19 dam and comply with the dam safety rules after the completion of repairs or
20 the rehabilitation project.

1 (D) For funding for construction of repair, rehabilitation, or removal,
2 the applicant shall provide proof that applicable local, State, and federal
3 permits have been obtained, including the State Dam Safety Order.

4 (E) To be eligible for nonemergency funding, an alternative analysis
5 review of dam removal options and costs must be conducted by the
6 Department, the Department of Fish and Wildlife, or a third party in
7 collaboration with either the Department or the Department of Fish and
8 Wildlife.

9 (F) Under this subdivision (b)(2), only engineering, analysis and
10 design studies that result in removal of a dam are eligible for loan subsidy.

11 (c) The Fund created by this section shall be established and held separate
12 and apart from any other funds or monies of the State and shall be used and
13 administered exclusively for the purposes set forth in this section. The funds
14 shall be invested in the same manner as permitted for investment of funds
15 belonging to the State or held in the Treasury. The Fund shall consist of the
16 following:

17 (1) ~~Such~~ such sums as may be appropriated or transferred thereto from
18 time to time by the General Assembly, the Emergency Board, or the Joint
19 Fiscal Committee during such times as the General Assembly is not in
20 session.;

1 (2) ~~Principal~~ principal and interest received from the repayment of loans
2 made from the Fund.;

3 (3) ~~Capitalization~~ capitalization grants and awards made to the State by
4 the United States of America for the purposes for which the Fund has been
5 established.;

6 (4) ~~Interest~~ interest earned from the investment of Fund balances.;

7 (5) ~~Private~~ private gifts, bequests, and donations made to the State for
8 the purposes for which the Fund has been established.; and

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

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

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

19 (A) details on all emergency and nonemergency loans made from the
20 Dam Safety Fund during the previous year.

1 (B) a description of each project funded from the Dam Safety Fund,
2 ~~_____~~ including dam name, town and waterbody in which the dam is located, hazard
 potential
32 ~~_____~~ classification, dam condition, details of the repair, rehabilitation, or removal, year of
 the last
43 ~~_____~~ and next Department inspection, project cost, loan amount, and repayment
54 ~~_____~~ terms;

65 ~~_____~~ (C) for emergency loans, justification for the emergency and an
76 ~~_____~~ explanation why action was needed to be undertaken immediately using State
87 ~~_____~~ funds; and

98 ~~_____~~ (D) the status of all loan repayments, including all outstanding loans,
109 ~~_____~~ dam and project name, the party responsible for repayment, terms of the loans,
110 ~~_____~~ status of repayment, and whether all or part of the loan was forgiven or
1211 ~~_____~~ subsidized.

1312 ~~_____~~ (2) The Department shall post reports made under this subsection to its
1413 ~~_____~~ website in the same date the report is submitted to the General Assembly.

1514 ~~_____~~ Sec. 12. 10 V.S.A. § 1110 is amended to read:

1615 ~~_____~~ § 1110. RULEMAKING

1716 ~~_____~~ The Commissioner of Environmental Conservation shall adopt rules to
1817 ~~_____~~ implement the requirements of this chapter for dams under the jurisdiction of
1918 ~~_____~~ the Department. The rules shall include:

2019 ~~_____~~ (1) a standard or regulatory threshold under which a dam is exempt from
2120 ~~_____~~ the registration or inspection requirements of this chapter;

1 (2) standards for:

2 (A) the siting, design, construction, reconstruction, enlargement,
3 modification, or alteration of a dam;

4 (B) operation and maintenance of a dam;

5 (C) inspection, monitoring, record keeping, and reporting;

6 (D) repair, breach, or removal of a dam;

7 (E) application for authorization under section 1082 of this title; and

8 (F) the development of an emergency action plan for a dam,

9 including guidance on how to develop an emergency action plan, the content of
10 a plan, and when and how an emergency action plan should be updated;

11 (3) criteria for the hazard potential classification of dams in the State;

12 (4) a process by which a person owning legal title to a dam or a person
13 owning the land on which the dam is located shall register a dam and record
14 the existence of the dam in the lands records; ~~and~~

15 (5) requirements for the person owning legal title to a dam or the person
16 owning the land on which the dam is located to conduct inspections of the
17 dam; and

18 (6) requirements for access to financing and subsidy from the Dam
19 Safety Revolving Loan Fund.

1 Sec. 13. 10 V.S.A. § 1080 is amended to read:

2 § 1080. DEFINITIONS

3 As used in this chapter:

4 (1) “Department” means the Department of Environmental
5 Conservation.

6 * * *

7 (6)(A) “Dam” means any artificial barrier, including its appurtenant
8 works, that is capable of impounding water, other liquids, or accumulated
9 sediments.

10 (B) “Dam” includes an artificial barrier that meets all of the
11 following:

12 (i) previously was capable of impounding water, other liquids, or
13 accumulated sediments;

14 (ii) was partially breached; and

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

16 (C) “Dam” ~~shall~~ does not mean:

17 (i) barriers or structures created by beaver or any other wild
18 animal as that term is defined in section 4001 of this title;

19 (ii) transportation infrastructure that has no normal water storage
20 capacity and that impounds water only during storm events;

1 (iii) an artificial barrier at a stormwater management structure that
2 is regulated by the Agency of Natural Resources under chapter 47 of this title;

3 (iv) an underground or elevated tank to store water otherwise
4 regulated by the Agency of Natural Resources;

5 (v) an agricultural waste storage facility regulated by the Agency
6 of Agriculture, Food and Markets under 6 V.S.A. chapter 215; or

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

8 * * *

9 (10) "Harm" means any personal injury or property damage.

10 Sec. 14. 10 V.S.A. § 1091 is added to read:

11 § 1091. LIABILITY FOR DAM BREACH

12 Any person who owns legal title to a dam or the owner of land on which a
13 dam is located shall be held strictly, jointly, and severally liable for harm
14 caused by the breach of a dam, provided:

15 (1) a dam has been classified as a significant or high hazard potential
16 dam by the Department; or

17 (2) the person who owns legal title to a dam or the owner of land on
18 which a dam is located is not in full compliance with any Department rules
19 related to dam safety, including rules that set standards for dam design,
20 construction, and maintenance to protect public safety.

1

* * * Effective Date * * *

2

Sec. 15. EFFECTIVE DATE

3

This act shall take effect on July 1, 2024.