

*Secretary Moore  
SNRE testimony on S.213.  
January 17, 2024*

- Good morning
  
- Jason did an excellent job recapping what you heard from our technical staff last week
  
- As he indicated, the focus of this bill – on ensuring no net loss of wetlands, protecting river corridors and floodplains and dam upkeep and/or removal – are all issues of critical importance to the Agency and areas of active focus and considerable work.
  
- Before digging into the specifics, however, I need to be unequivocal in stating that the successful implementation of any version of what is envisioned here will require significant, additional resources
  
- Over the past five years that Agency has taken on a series of significant and on-going initiatives. Things like:
  - Leading on climate action, including supporting the Climate Council, on behalf of state agencies
  - Standing up an environmental justice unit and supporting the work needed to more fully integrate these important principles into our work

- Fulfilling the implementation requirements of Act 64 (2015) – Vermont’s Clean Water Act – and Act 76 (2019) related to establishing Clean Water Service Providers – and coordinating more than \$50 million in annual investments in clean water
- Leading PFAS monitoring and response efforts statewide
- Initiating PCB testing in the more than 300 Vermont schools built prior to 1980
- Expanding Vermont’s outdoor recreation offerings, including support for the VOREC program, and welcoming more than 1 million visitors each year to our state parks
- Managing one-time appropriations for things like:
  - Brownfields remediation
  - State lands (fishing access areas, wildlife management areas and state forests) investments
  - Dam safety improvements on ANR-owned dams
- To say nothing of managing literally hundreds of millions of dollars of investment opportunities made possible by ARPA, the bipartisan infrastructure law and the inflation reduction act
- And then, on top of all this, this summer there were a series of catastrophic flood events.

- I am unbelievably proud of how the Agency's staff have risen and risen and risen to meet the moment – to serve Vermont and Vermonters.
- But, at this point, our capacity to take on new things – large or small – is completely exhausted.
- Make no mistake, what is envisioned by this bill is a massive undertaking and, in order to be successful – it must be appropriately resourced... in terms of both the time and the capacity provided to do the work.
  - The Governor will unveil his budget next week, and while you can be sure it contains important investments that will continue improving Vermont's resilience in the face of a changing climate – it does not contemplate the types of resources that will be required to implement S.213 as drafted
  - It is essential that you not allow your thinking about the body of work you task the agency with to become separated from the resources – both time and capacity – provided to do the work... as we have no “untapped reserves” to draw on to support this sort of expansion.

- I will now touch on each of the key areas of the bill...

## **Wetlands Restoration and Mapping**

- As Jason noted, conservation is core to our Agency mission... and last week you heard about both our wetlands permitting program in DEC as well as our wetlands restoration work in DFW.
- We agree that **better mapping is crucial for wetland management**. It helps developers plan to avoid wetlands and will be used to improve the wetland restoration prioritization model.
  - And we are making these investments
  - We are on-track to complete a statewide National Wetlands Inventory update by 2026
- We believe there are diminishing returns on a second update to the mapping within 5 years as envisioned by S.213
  - Our recommendation would be instead to have the agency monitor technology advancements to determine when the best next basin-wide update is appropriate.
- In addition, mitigation for adverse impact to wetlands is required under the current Vermont Wetland Rules.
  - And avoidance and minimization must be maximized before compensation is allowed.
  - This is important because we know that intact wetlands function better than newly restored wetlands.

- And while on-site compensation is good because it restores wetlands locally, it requires a lot of hand-holding by agency staff and can be hard to find long-term stewards.
- This is in no small part why we offer In-Lieu-Fee mitigation, a payment system where Ducks Unlimited restores wetlands for permit project impacts
  - It requires less hand-holding, and is completed by restoration professionals.
- The legislation as drafted lacks the necessary resources
  - Capacity will be needed to coordinate the more intensive approach to conservation restoration work envisioned by the bill given that there are no reductions in other responsibilities contemplated.

### **Flood Hazard Area and River Corridor (FHARC) Management**

- As drafted, the expansion of the FHARC rule would “flip” the responsibility for the regulation of all land uses in the FEMA flood hazard area in the 274 communities that participate in the National Flood Insurance Program (NFIP) to the State.
  - Currently, these 274 communities regulate land uses in FEMA-mapped flood hazard areas as part of their obligations as participants in the National Flood Insurance Program.
- Flood Hazard Area regulation is not just for new development, but modifications to existing, including repairs to flood damaged buildings.

- The trigger for development is any human-made change to improved or unimproved real estate, so permitting is required for development at all scales.
  - Currently, we estimate that there are more than 12,400 structures located in or immediately adjacent to FEMA mapped flood hazard areas statewide.
- We fully appreciate the challenges for small towns to administer this complex permitting program.
  - We are interested in discussing ways to more effectively support our towns with this significant obligation, but we do NOT believe the State taking it all over from the Towns is the best way to accomplish that.
- It will take a lot of resources to administer this at the state level.
  - As I believe Rob shared last week, our preliminary estimate is that a centralized approach within ANR would likely require 15-20 new staff people to administer.
- As an alternative, the Administration is proposing to establish a state-wide floodplain standards that any town in the NFIP would need to adopt in order to continue participation.
  - This would allow for the existing state resources to provide direct technical assistance including developing guidance, support documents and education materials to the new state standard.

- The committee may also wish to consider expanding the FHRC rule to extend jurisdiction to development under Act 250 jurisdiction – essentially cleaning up the process by issuing permits rather than making recommendations to district commissions.
- In addition to the FHARC changes, S.213 also proposes that ANR regulate mapped river corridors
  - This is about 5,600 miles of riparian areas along of the larger rivers and streams around the state, or over 209,000 acres of land.
  - This is 5 times the land area regulated by the Lake Shoreland Encroachment program (42,000 acres) – which is currently staffed by a team of four.
- Given the scale of area contemplated for river corridor regulation, public outreach and engagement is essential before jurisdiction is expanded
  - [after the fact compliance is hard to gain]
- As drafted, the Flood Hazard Area and River Corridor components of S.213 would require significant new staff capacity at the agency, without which it would be entirely unmanageable.

## Dam Safety

- ANR appreciates the attention on the Dam Safety Program, as we have many important improvements underway, including progress with the Army Corps of Engineers on our flood-controlled dams on the Winooski, our second phase of our Dam Safety Program rulemaking process, and completing our state-owned dam safety assessment.
- The Dam Safety Program is undergoing a rulemaking process that is significant in that it will make mandatory, what is currently voluntary, dam ownership requirements, and this bill gets in front of that process.
- The legislation focuses heavily on dam removal instead of dam safety. It is true that the safest dam is the one that is not there. However, there are many structures in the state, public and private, that serve important flood control, hydroelectric, or recreational purposes. This legislation needs to balance that.
- The legislation also references the transfer of PUC regulated dams without defining it.
- **The important component of the legislation** is the consideration of a Revolving Loan Fund to support dam owners in necessary repair or removal in order to protect communities from unsafe dams in future flooding events.
- The legislation as drafted lacks the necessary resources to do this important work.



## **IN CLOSING:**

- I appreciate the intent in drafting S.213 and the importance of wetlands regulation and restoration, river corridor and floodplain protection, and dam safety as we work together to respond to impacts of a changing climate.
- But, as drafted, S.213 is currently unmanageable.
- For this work to be successful in fulfilling the vision of this bill – it must be staffed and have a timeline and step-wise approach that supports Vermonters in becoming true partners in this work.
- The agency stands ready to help address the concerns we've laid out here.

