S.216

Introduced by Senator Watson

Referred to Committee on

Date:

Subject: Conservation and development; water quality; restoration; general permit

Statement of purpose of bill as introduced: This bill would require that the Secretary of Natural Resources adopt by rule on or before December 1, 2027, a general permit for ecological restoration projects for waters of the State. The bill also would require the Department of Environmental Conservation Dam Safety Program in coordination with stakeholders to examine the environmental review process required for a dam order needed for repair or rehabilitation of existing dams and consider what, and to what extent, other factors should be considered before a dam order for repair is granted.

An act relating to ecological restoration projects on waters of the State

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

Sec. 1. FINDINGS AND PURPOSE

(a) Findings. The General Assembly finds that:

(1) Vermont's natural landscape has been influenced by humans for centuries, but, since European settlement, much of the infrastructure, such as

dams, old roads, berms, undersized culverts, bridges, and mines, causes long-term negative impacts on natural and human communities long after the intended use and in some cases past a safe threshold of functionality.

(2) Over the last two centuries, human channel management practices, such as riverbank armoring, straightening, dredging, and berming, have created a degraded condition in many Vermont rivers and streams where flows are largely kept within the channel, resulting in increased stream power, reduced access to floodplains, and increased erosion hazards and flood damages.

(3) As Vermont experiences a rapidly warming climate, implementation of water restoration projects can help prevent public harm and property damage while also working to address and reverse some of the direct causes of impairment by restoring natural processes such as sediment transport, floodplain function, water flow and filtration, soil stabilization, nutrient cycling, and native species interaction and succession.

(4) Restored stream and river systems can attenuate flood waters, filter stormwater, store carbon, and provide habitat refuge for diverse species. Protecting these natural systems will best prepare us to adapt for our future. Improved conditions for species diversity within an ecosystem enhances its stability and ability to recover from disturbance.

(5) Dam removal projects are river restoration projects that offer many benefits to flood resilience, public safety, aquatic habitat, stream equilibrium,

water quality, and recreation. Studies have found that the long-term ecological benefits, such as improved water quality and temperature, natural sediment transport, and resident and migratory species passage and recovery, demonstrate that dam removal is an effective long-term river restoration tool.

(6) The Vermont General Assembly enacted 2024 Acts and Resolves No. 121, known as the Flood Safety Act, that requires a State policy of a net gain of wetlands to be achieved through protection of existing wetlands and restoration of wetlands that were previously adversely affected.

(7) Ecological restoration is prioritized in numerous State and regional plans, including Vermont's Climate Action Plan, the Resilience Implementation Strategy, Vermont Conservation Design, the State Wildlife Action Plan, and Lake Champlain Basin Program's Opportunities for Action.

(8) By reducing the impacts of flooding on communities and infrastructure, river and stream restoration projects can also reduce the damage caused by increasingly frequent flooding and the cost of repairs and recovery while reducing the costs of delays.

(9) The development review process for water restoration projects results in significant delays and adds unnecessary costs. As these types of projects are often publicly funded, the goal is to limit the strain on these resources and complete as many water restoration projects as possible with

these limited funds to make communities as flood and drought resilient as possible.

(b) Purpose.

(1) The damage from the devastating floods of 2023 and 2024 was compounded by centuries of human activities that have led to the degradation of Vermont's rivers and their surrounding watersheds. There is a need to restore the natural functions of waters of the State and the associated floodplains and wetlands in order to address flood and drought resiliency, water quality degradation, and biodiversity decline.

(2) Despite this need, water restoration projects currently require a complicated regulatory review process involving multiple state permits in order to move the projects forward. However, these permits were created to ensure that development would limit impacts to natural systems and, therefore, these permits are inappropriate for ecological restoration since they create barriers that delay implementation and increase the cost of critical restoration projects.

(3) Due to an urgent need to achieve the public safety and long-term ecological benefits of water restoration projects, such as dam removals, traditional development projects and restoration projects must be regulated differently, and with a categorically elevated degree of efficiency for restoration projects. Under this proposal, the Department of Environmental

Conservation and the Department of Fish and Wildlife should work together to establish general permit criteria for water restoration projects. This would provide a holistic approach that streamlines the regulatory process, and promotes efficient, effective restoration to meet the scale of the problems that the State's river systems and human communities face.

Sec. 2. 10 V.S.A. chapter 47, subchapter 3B is added to read:

Subchapter 3B. River Restoration Projects

§ 1361. DEFINITIONS

As used in this subchapter:

(1) "Ecological restoration" means the process of assisting in the recovery of the structure and function of a natural condition following negative impacts through human actions, such as development including infrastructure and altering rivers and flood plains.

(2) "Ecosystems" are dynamic communities of plants, animals, and microorganisms interacting with their physical environment.

(3) "Dam removal" means all actions needed to eliminate the risk of dam failure–related inundation below the dam and channel instability upstream of the dam, including partial or complete structural removal to the extent that the dam is no longer capable of impounding water, liquid, or sediment and natural river functions are restored, including sediment transport and upstream and downstream aquatic organism passage.

(4) "Secretary" means the Secretary of Natural Resources.

§ 1362. RIVER RESTORATION PROJECTS; GENERAL PERMIT

(a) On or before December 1, 2026, the Secretary shall adopt by rule a general permit for ecological restoration projects for waters of the State with the explicit objectives of increasing flood resilience, improving water quality, and increasing biodiversity that are accomplished through natural resources restoration practices including dam removal, culvert replacement, berm removal, and floodplain restoration projects.

(b) The general permit shall consider whether all or some of the criteria of the following current permits should be incorporated into a water restoration general permit, including a stream alteration permit, a dam safety order, a wetlands determination or permit, a rare and threatened species review, a Clean Water Act Section 401 water quality certification, a stormwater construction general or individual permit, an insignificant waste management event permit, and a shoreland protection permit.

§ 1363. DAM SAFETY ORDER

(a) The Department of Environmental Conservation Dam Safety Program, in coordination with stakeholders including engineers, municipalities, utilities, project proponents, and restoration practitioners, shall examine the environmental review process required for a dam order needed for repair or rehabilitation of existing dams under 10 V.S.A. chapter 43 and consider what,

and to what extent, other factors should be considered before a dam order for repair is granted.

(b) The examination required by subsection (a) of this section shall encompass the scope of the current environmental review process and the effects of the proposed project on public safety as required in section 1086 of this title, as well as the impacts on ecological restoration for flood resiliency, and include prioritization of the following:

(1) identify improvements that will more comprehensively address the public safety and environmental impacts of these projects, including an alternatives analysis for dam breaching or dam removal;

(2) identify specific criteria that the Department of Fish and Wildlife investigation required under section 1084 of this title will address to limit impacts on fish and wildlife in the vicinity of a dam; and

(3) that the greatest benefit to the people of the State shall include ecological restoration, as well as public safety, scenic and recreational values, fish and wildlife, existing public recreational uses, creation of any hazard to public use, and attainment of Vermont Water Quality Standards, and how each of these factors weighs into the recommendations in the dam order.

Sec. 3. IMPLEMENTATION; REPORT TO GENERAL ASSEMBLY

On or before December 1, 2027, the Department of Environmental Conservation shall submit to the House Committee on Environment and the

Senate Committee on Natural Resources and Energy the recommended changes to the dam safety environmental review process required under 10 V.S.A. § 1363. The recommendations shall include potential statutory changes to 10 V.S.A. chapter 43 that address the factors listed in 10 V.S.A. § 1363(b).

Sec. 4. EFFECTIVE DATE

This act shall take effect on July 1, 2026.