

1 H.385

2 Introduced by Representatives Pearson of Burlington, Cheney of Norwich,

3 Deen of Westminster, Edwards of Brattleboro, Klein of

4 East Montpelier, Masland of Thetford, Partridge of Windham,

5 Ram of Burlington, Sharpe of Bristol, Weston of Burlington

6 and Wizowaty of Burlington

7 Referred to Committee on

8 Date:

9 Subject: Conservation; natural resources; Vermont common assets trust

10 Statement of purpose: This bill proposes to make clear that state policy is to  
11 protect certain common assets (such as air and water) for the benefit of present  
12 and future generations, and to establish a framework under which certain users  
13 of those common assets may be assessed fees that would be deposited into a  
14 common assets trust fund, which would be managed so as to protect those  
15 assets and serve the interests of present and future people of the state. It  
16 proposes to provide that the common assets trust fund would be managed by a  
17 board of trustees, appointed according to the process established in the bill, in  
18 the interest of the beneficiaries. It proposes to establish an advisory committee  
19 to recommend to the general assembly ways in which the framework could be  
20 implemented to serve the purposes expressed in the bill.

1 An act relating to establishing a Vermont common assets trust

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

3 Sec. 1. 10 V.S.A. chapter 167 is added to read:

4 CHAPTER 167. VERMONT COMMON ASSETS TRUST

5 § 7601. LEGISLATIVE FINDINGS

6 The general assembly finds:

7 (1) The public trust doctrine dates back to Roman civil law and  
8 historically was codified in the Institutes of Justinian, which assured the  
9 citizens of Rome that: “The following things are by natural law common to all  
10 – the air, running water, the sea, and consequently the seashore. No one  
11 therefore is forbidden access to the seashore, provided he abstains from injury  
12 to houses, monuments, and buildings generally; for these are not, like the sea  
13 itself, subject to the law of nations.”

14 (2) As applied through English common law and incorporated into the  
15 common law of the United States and of the state of Vermont, the public trust  
16 doctrine provides that navigable waters and the lands submerged by them in a  
17 state are held by the state in trust for the benefit of all the people, and  
18 establishes the right of the public to enjoy fully public trust lands and waters  
19 for a wide variety of recognized public uses. The doctrine is not fixed or static  
20 and is to be extended to meet changing conditions and needs of the public it  
21 was created to benefit.

1           (3) The Declaration of Independence built in part upon the public trust  
2 doctrine when it declared: “We hold these truths to be self-evident, that all  
3 men are created equal, that they are endowed by their Creator with certain  
4 unalienable Rights, that among these are Life, Liberty and the pursuit of  
5 Happiness.”

6           (4) The list of inalienable rights contained in the Declaration of  
7 Independence is not exclusive. The Declaration states that life, liberty, and the  
8 pursuit of happiness are “among” the unspecified, other inalienable rights  
9 endowed on humans by their Creator.

10           (5) Other inalienable rights of all humans logically include rights of  
11 access to common assets essential for life, such as the air we breathe and the  
12 water we drink.

13           (6) Other common assets that have been historically protected by  
14 Roman law or by the Magna Carta include shorelines, wildlife, fisheries, and  
15 forests, and the accompanying common ability to hunt wild animals for food;  
16 to gather firewood, building materials, and medicinal herbs; and to graze  
17 livestock.

18           (7) As society moves forward, the list of assets that should belong to the  
19 people in common because the assets were inherited or created together, and  
20 therefore should be preserved in the common interest has expanded now  
21 logically to include natural assets such as undisturbed habitats, entire

1 ecosystems, biological diversity, waste absorption capacity, nutrient cycling,  
2 flood control, pollination, raw materials, fresh water replenishment systems,  
3 soil formation systems, and the global atmosphere; and also to include social  
4 assets such as the Internet, our legal and political systems, universities,  
5 libraries, accounting procedures, science and technology, transportation  
6 infrastructure, the radio spectrum, and city parks. In enacting the regional  
7 greenhouse gas initiative (RGGI), located at 30 V.S.A. § 255, which requires  
8 the development of a carbon cap and trade program, the state of Vermont  
9 already has determined that the ability to discharge carbon into the atmosphere  
10 is an ability that belongs to people in common, and that needs to be managed  
11 in the common interest.

12 (8) In an illustration of the distinction between state property (which can  
13 be controlled and managed or mismanaged by the state) and common property  
14 (which belongs to the people), the doctrine of *res communes* provided that the  
15 king could not grant exclusive rights of access to a common resource.

16 (9) The nature of a common asset is that it may be used by the public,  
17 but, as in the case of the public trust doctrine, an individual should be limited  
18 to uses that do not deplete the capital of the asset, but that are consistent with  
19 the common asset's being available for the enjoyment of future generations.

20 (10) It is appropriate that the concept of the public trust be explicitly  
21 expanded, so that a legal institution is created whose managers, the trustees,

1 have clear legal responsibilities to protect the common resources, to assure that  
2 the capital assets are not depleted, and to manage any assets that may arise  
3 from the common resources on behalf of the beneficiaries in a manner that  
4 includes strict fiduciary responsibilities, transparency, and accountability. The  
5 creation of such an institution is particularly important in regard to those  
6 beneficiaries who, as members of future generations or ecosystems or  
7 nonhuman species, are unable at present to represent their own substantial  
8 interests.

9 (11) It is appropriate to review those common assets that have a value in  
10 the market and which are appropriate to buy and sell, as part of a process to  
11 determine anew whether classes of users of common assets should be subject  
12 to clear limits and assessed fees that would be managed by the trustees in a  
13 manner that preserves the common assets and serves the interests of the  
14 beneficiaries.

15 (12) It is appropriate to consider establishing management systems  
16 pursuant to which sources that pollute the common assets are subject to clear  
17 limits, and to consider systems in which any ability to pollute the common  
18 assets is auctioned, or allocated in equal shares to each citizen of the state, who  
19 may then retain the rights or sell them to a willing buyer.

20 (13) It is appropriate for the state to establish a common assets trust fund  
21 which may be used to receive fees which may be derived from profits flowing

1 from the use of common assets, and to create an appropriate management  
2 framework for that trust fund.

3 § 7602. VERMONT COMMON ASSETS TRUST CORPORATION

4 (a) There is established the Vermont common assets trust corporation, a  
5 public corporation and government instrumentality managed by a board of  
6 trustees. The purpose of the corporation is to manage and invest the assets of  
7 the fund in accordance with this chapter and perform other functions  
8 established by law. As trustees, the members have fiduciary obligations: first,  
9 to future generations; second, to all living persons within the state, equally.

10 (b) The board of trustees of the Vermont common assets trust corporation  
11 shall consist of four members appointed by the governor, one appointed by the  
12 speaker of the house, and one appointed by the president pro tempore of the  
13 senate. Two of the members appointed by the governor shall be heads of  
14 agencies of state government, one of whom shall be the commissioner of taxes.  
15 The other two members appointed by the governor, the member appointed by  
16 the speaker of the house, and the member appointed by the president pro  
17 tempore of the senate shall be appointed from the public and shall not hold any  
18 other state or federal office, position, or employment, either elective or  
19 appointed, except as a member of the armed forces of either the United States  
20 or of this state.

1       (c) The four public members of the board shall have recognized  
2       competence and wide experience in finance, investments, or other business  
3       management-related fields. All members shall be free of substantial conflicts  
4       of interest and shall submit the ethics questionnaire established by executive  
5       order no. 3-45.

6       (d) The board annually shall elect a chair from among its members.

7       (e) The public members of the board shall be appointed for terms of four  
8       years, and they may be reappointed. The terms of the public members shall be  
9       staggered so that no more than one term of a public member expires each year.

10       (f) Notwithstanding the provisions of 3 V.S.A. chapter 41, the governor  
11       may remove a public member of the board from office only for cause. A  
12       removal by the governor shall be in writing and shall state the reason for the  
13       removal. A member who is removed by the governor may not participate in  
14       board business and may not be counted for purposes of establishing a quorum  
15       after the member receives written notice of removal from the governor.

16       (g) A vacancy on the board shall be promptly filled by appointment by the  
17       original appointing authority. An appointee to a vacancy shall hold office for  
18       the balance of the term for which the appointee's predecessor on the board was  
19       appointed.

20       (h) A vacancy on the board shall not impair the authority of a quorum of  
21       the board to exercise all the powers and perform all the duties of the board.

1        (i) Public members of the board shall receive an honorarium of \$400.00 for  
2        each day spent at a meeting of the board or at a meeting of a subcommittee of  
3        the board or at a public meeting as a representative of the board. Members of  
4        the board are entitled to per diem and travel allowances as provided by  
5        32 V.S.A. § 1010 for members of state boards and commissions.

6        (j) The board may employ and determine the salary of an executive  
7        director. The executive director may, with the approval of the board, select  
8        and employ additional staff as necessary. An employee of the corporation,  
9        including the executive director, may not be a member of the board.

10       (k) The board shall have all the powers necessary and convenient to carry  
11       out and effectuate the purposes and provisions of this chapter, including  
12       without limitation those general powers provided to a business corporation by  
13       11 V.S.A. § 1852.

14       (l) By September 30 of each year, the board shall publish a report of the  
15       fund for distribution to the governor and the public. The board shall notify the  
16       general assembly that the report is available. The report shall be written in  
17       easily understandable language. The report shall include financial statements  
18       audited by independent outside auditors, a statement of the amount of money  
19       received by the fund from each investment during the period covered, a  
20       statement of investments of the fund, including an appraisal at market value, a  
21       description of fund investment activity during the period covered by the report.



1 and any other information the board believes would be of interest to the  
2 governor, the general assembly, and the public. The annual income statement  
3 and balance sheet of the fund shall be published in at least one newspaper in  
4 each judicial district. The income statement and balance sheet for the two  
5 fiscal years preceding shall be included in that publication.

6 (m) Information in the possession of the corporation is a public record,  
7 except that information that discloses the particulars of the business or affairs  
8 of a private enterprise or investor is confidential and is not a public record.  
9 Confidential information may be disclosed only for the purposes of an official  
10 law enforcement investigation or when its production is required in a court  
11 proceeding. These restrictions do not prohibit the publication of statistics  
12 presented in a manner that prevents the identification of particular reports,  
13 items, persons, or enterprises. The board shall take measures appropriate to  
14 assure a high degree of transparency in whatever it does and shall post  
15 information about its actions on the Internet in a timely fashion.

16 § 7603. VERMONT COMMON ASSETS TRUST FUND

17 (a) There is hereby created in the state treasury a fund to be known as the  
18 Vermont common assets trust fund, to be expended by the board of trustees of  
19 the common assets trust fund. The fund shall consist of appropriations of the  
20 general assembly and other sources of revenue established by law. All  
21 balances in the fund at the end of any fiscal year shall be carried forward and

1 remain a part of the fund. Interest earned by the fund shall be deposited into  
2 the fund. Disbursements from the fund shall be made by the state treasurer on  
3 warrants drawn by the commissioner of finance and management.

4 (b) The board of trustees may authorize disbursements from the fund for:

5 (1) enhancing the common assets;

6 (2) activities that provide direct benefits to all citizens of the state,

7 which may include measures relating to health care, Social Security

8 enhancements, startup grants for young people upon reaching the age of 18

9 years, and public libraries and education. However, a minimum of 25 percent

10 of disbursements of the fund shall be reserved for and paid out as pro rata

11 dividends for each citizen of the state;

12 (3) other purposes authorized by law; and

13 (4) otherwise as the board determines to be in the interests of the

14 beneficiaries.

15 § 7604. VERMONT COMMON ASSETS TRUST ADVISORY

16 COMMITTEE

17 (a) There is created a Vermont common assets trust advisory committee.

18 The committee shall consist of two members of the senate and one

19 representative of the general public appointed by the committee on

20 committees, two members of the house and one representative of the general

1 public appointed by the speaker of the house, and three persons appointed by  
2 the governor.

3 (b) The advisory committee shall elect a chair, vice chair, and clerk and  
4 shall adopt rules of procedure. The chair shall rotate biennially between the  
5 house and the senate members. The committee may meet during a session of  
6 the general assembly at the call of the chair or a majority of the members of the  
7 committee. The committee may meet during adjournment subject to approval  
8 of the speaker of the house and the president pro tempore of the senate. A  
9 majority of the membership shall constitute a quorum.

10 (c) The staff of the legislative council shall provide professional and  
11 clerical assistance to the committee.

12 (d) For attendance at a meeting when the general assembly is not in  
13 session, members of the committee shall be entitled to the same per diem  
14 compensation and reimbursement for necessary expenses as provided members  
15 of standing committees under 2 V.S.A. § 406.

16 (e) The committee shall hold public meetings, invite input from the general  
17 public, and work with interested persons in a process to:

18 (1) Carry on a continuing review of the status of the common assets in  
19 the state of Vermont.

1           (2) Consider:

2                   (A) the advantages and disadvantages of establishing caps on the use  
3 of a common asset;

4                   (B) establishing or increasing fees for polluting or other  
5 nonbeneficial uses of common assets while, possibly, at the same time  
6 decreasing reliance on revenues from payroll or other taxes;

7                   (C) redirecting existing fees for the use of common assets into the  
8 common assets trust fund; and

9                   (D) endowing citizens with enforceable rights to require that the  
10 common assets be managed for the benefit of future generations, which  
11 includes rights to experience natural ecosystems and to live among healthy,  
12 diverse nonhuman species.

13           (3) Identify harmful continuing subsidies that should be repealed or  
14 otherwise revised and barriers to the state's ability to adequately protect the  
15 common assets under the status quo.

16           (4) Recommend ways that income from the trust fund may best be  
17 allocated to benefit all of the citizens in the state, possibly to include  
18 auctioning a portion of the available capacity of a common asset or allocating  
19 to each citizen ownership of an equal portion of that capacity, or both.

1           (5) Develop appropriate recommendations, including draft legislation,  
2           and at least annually report to the general assembly with the results of its  
3           deliberations.

4           Sec. 2. EFFECTIVE DATE

5           This act shall take effect on January 1, 2012, except that on passage the  
6           governor, the speaker of the house, and the president pro tempore shall have  
7           authority to make all appointments required by this act, which appointments  
8           shall be made by December 31, 2011.