

1
2
3
4
5
6
7
8
9

10
11

12
13
14
15
16
17
18
19
20

H.615

Introduced by Representatives Mihaly of Calais, Casey of Montpelier, and
Chapin of East Montpelier

Referred to Committee on

Date:

Subject: Conservation and development; dams; transfer of jurisdiction

Statement of purpose of bill as introduced: This bill proposes to transfer the
jurisdiction over safety for certain dams in the State from the Public Utility
Commission to the Department of Environmental Conservation.

An act relating to transferring safety jurisdiction over certain hydroelectric
dams

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

Sec. 1. 10 V.S.A. chapter 43 is amended to read:

CHAPTER 43. DAMS

§ 1079. PURPOSE

It is the purpose of this chapter to protect public safety and provide for the
public good through the inventory, inspection, and evaluation of dams in the
State.

§ 1080. DEFINITIONS

As used in this chapter:

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

3 * * *

4 (4) “Engineer” means a professional engineer licensed under Title 26
5 who has experience in the design and investigation of dams.

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 (7) “Federal dam” means:

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

10 (B) a dam subject to a Federal Energy Regulatory Commission
11 license or exemption.

12 (8) “Intake structure” means a dam that is constructed and operated for
13 the primary purposes of minimally impounding water for the measurement and
14 withdrawal of streamflow to ensure use of the withdrawn water for
15 snowmaking, potable water, irrigation, or other purposes approved by the
16 Department.

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

18 § 1081. JURISDICTION OF DEPARTMENT ~~AND PUBLIC UTILITY~~
19 ~~COMMISSION~~

20 (a) Powers and duties. Unless otherwise provided, the powers and duties
21 authorized by this chapter shall be exercised by the Department, ~~except that the~~

1 ~~Public Utility Commission shall exercise those powers and duties over~~
2 ~~nonfederal dams and projects that relate to or are incident to the generation of~~
3 ~~electric energy for public use or as a part of a public utility system. Nonfederal~~
4 ~~dams at which the generation of electric energy is subject to licensing~~
5 ~~jurisdiction under the Federal Power Act, 16 U.S.C. chapter 12, subchapter 1,~~
6 ~~shall not be under the jurisdiction of the Public Utility Commission of~~
7 Environmental Conservation.

8 (b) ~~Transfer of jurisdiction. Jurisdiction over a nonfederal dam is~~
9 ~~transferred from the Department to the Public Utility Commission when the~~
10 ~~Public Utility Commission receives an application for a certificate of public~~
11 ~~good for electricity generation at that dam. Jurisdiction over a federal dam is~~
12 ~~transferred to the Department when the license or exemption for a federal dam~~
13 ~~expires or is otherwise lost; when a certificate of public good is revoked or~~
14 ~~otherwise lost; or when the Public Utility Commission denies an application~~
15 ~~for a certificate of public good.~~

16 (c) ~~Transfer of records. Upon transfer of jurisdiction as set forth in~~
17 ~~subsection (b) of this section and upon written request, the State agency having~~
18 ~~former jurisdiction over a dam shall transfer copies of all records pertaining to~~
19 ~~the dam to the agency acquiring jurisdiction.~~

1 § 1082. AUTHORIZATION

2 (a) No person shall construct, enlarge, raise, lower, remodel, reconstruct, or
3 otherwise alter any nonfederal dam, pond, or impoundment or other structure
4 that is or will be capable of impounding more than 500,000 cubic feet of water
5 or other liquid after construction or alteration, or remove, breach, or otherwise
6 lessen the capacity of an existing nonfederal dam that is or was capable of
7 impounding more than 500,000 cubic feet within or along the borders of this
8 State where land in this State is proposed to be overflowed, or at the outlet of
9 any body of water within this State, unless authorized by the ~~State agency~~
10 ~~having jurisdiction so to do~~ Department, provided that an application for
11 activities that require authorization under 30 V.S.A. § 248 also shall be
12 approved by the Public Utility Commission. However, in the matter of flood
13 control projects where cooperation with the federal government is provided for
14 by the provisions of section 1100 of this title, that section shall control.

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

19 (c) An intake structure in existence on July 1, 2018 that continues to
20 operate in accordance with a valid Department permit or approval that contains
21 requirements for inspection and maintenance subject to section 1105 of this

1 title shall have a rebuttable presumption of compliance with the requirements
2 of this chapter and rules adopted under this chapter, provided that no
3 presumption of compliance shall apply if one or both of the following occur on
4 or after July 1, 2018:

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

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

10 § 1083. APPLICATION

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

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

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

18 (3) the plans and specifications to be followed in the construction,
19 remodeling, reconstruction, altering, lowering, raising, removal, breaching, or
20 adding to;

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

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

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

5 § 1084. DEPARTMENT OF FISH AND WILDLIFE; INVESTIGATION

6 The Commissioner of Fish and Wildlife shall investigate the potential
7 effects on fish and wildlife habitats of any proposal subject to section 1082 of
8 this title and shall certify the results to the ~~State agency having jurisdiction~~
9 Department prior to any hearing or meeting relating to the determination of
10 public good and public safety.

11 § 1085. NOTICE OF APPLICATION

12 Upon receipt of the application required by section 1082 of this title, the
13 ~~State agency having jurisdiction~~ Department shall give notice to the legislative
14 body of each municipality in which the dam is located and to all interested
15 persons. The Department shall provide notice and an opportunity for public
16 comment in accordance with chapter 170 of this title.

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

19 ~~(2) For any project subject to its jurisdiction under this chapter, the~~
20 ~~Public Utility Commission shall hold a hearing on the application. The~~
21 ~~purpose of the hearing shall be to determine whether the project serves the~~

1 ~~public good as defined in section 1086 of this title and provides adequately for~~
2 ~~the public safety. The hearing shall be held in a municipality in the vicinity of~~
3 ~~the proposed project and may be consolidated with other hearings, including~~
4 ~~hearings under 30 V.S.A. § 248 concerning the same project. Notice shall be~~
5 ~~given at least 10 days before the hearing to interested persons by posting in the~~
6 ~~municipal offices of the towns in which the project will be completed and by~~
7 ~~publishing in a local newspaper.~~

8 § 1086. DETERMINATION OF PUBLIC GOOD; CERTIFICATES

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

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

16 (2) scenic and recreational values;

17 (3) fish and wildlife;

18 (4) forests and forest programs;

19 (5) [Repealed.]

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

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

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

5 (9) the creation of any public benefits;

6 (10) attainment of the Vermont water quality standards;

7 (11) any applicable State, regional, or municipal plans;

8 (12) municipal grand lists and revenues;

9 (13) public safety; and

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

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

1 element of the public good listed in subsection (a) of this section. Otherwise it
2 shall issue its order disapproving the application.

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

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

11 § 1087. REVIEW OF PLANS AND SPECIFICATIONS

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

1 § 1089. EMPLOYMENT OF ENGINEER

2 With the approval of the Governor, the ~~State agency having jurisdiction~~
3 Department may ~~employ~~ require an engineer to investigate the property,
4 review the plans and specifications, and make such additional investigation as
5 the ~~State agency~~ Department shall deem necessary, ~~and such~~. The engineer
6 conducting an investigation under this section shall be an employee of the
7 Department or shall be operating under the supervision of the Department as
8 an independent consultant. The engineer shall report to the ~~State agency his or~~
9 ~~her~~ Department the engineer's findings in respect thereto and the Department
10 shall approve or disapprove the findings.

11 § 1090. CONSTRUCTION SUPERVISION

12 The construction, alteration, or other action authorized in section 1086 of
13 this title shall be supervised by an engineer employed by the applicant. Upon
14 completion of the authorized project, the engineer shall certify to the ~~agency~~
15 ~~having jurisdiction~~ Department that the project has been completed in
16 conformance with the approved plans and specifications.

17 § 1095. UNSAFE DAM; PETITION; HEARING; EMERGENCY

18 (a) On receipt of a petition signed by ~~no~~ not fewer than ~~ten~~ 10 interested
19 persons or the legislative body of a municipality, the ~~State agency having~~
20 ~~jurisdiction~~ Department shall, or upon its own motion it may, institute
21 investigations by an engineer as described in section 1087 of this title

1 regarding the safety of any existing nonfederal dam or portion of the dam of
2 any size. The ~~agency~~ Department may fix a time and place for hearing and
3 shall give notice in the manner it directs to all interested persons. The engineer
4 shall present ~~his or her~~ the engineer's findings and recommendations at the
5 hearing. After the hearing, if the ~~agency~~ Department finds that the nonfederal
6 dam or portion of the dam as maintained or operated is unsafe or is a menace
7 to people or property above or below the dam, it shall issue an order directing
8 reconstruction, repair, removal, breaching, draining, or other action it considers
9 necessary to improve the safety of the dam sufficiently to protect life and
10 property as required by the ~~State agency having jurisdiction~~ Department.

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

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

6 § 1099. APPEALS

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

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

11 * * *

12 § 1105. INSPECTION OF DAMS

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

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

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

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

4 (c) Dam safety reports. If a dam inspection report is completed by the
5 ~~State agency having jurisdiction, the agency~~ Department, the Department shall
6 provide the person owning legal title to the dam or the owner of the land on
7 which the dam is located with a copy of the inspection report.

8 * * *

9 § 1107. HAZARD POTENTIAL CLASSIFICATIONS

10 (a) The ~~State agency having jurisdiction over a nonfederal dam listed in the~~
11 ~~Vermont Dam Inventory~~ Department shall assess the hazard potential
12 classification of ~~the dam~~ all nonfederal dams listed in the Vermont Dam
13 Inventory based on the potential loss of human life, property damage, and
14 economic loss that would occur in the event of the failure of the dam. There
15 shall be four hazard potential classifications: high, significant, low, and
16 minimal.

17 (b) The ~~State agency having jurisdiction over a nonfederal dam on the~~
18 ~~Vermont Dam Inventory~~ Department may assess or reassess the hazard
19 potential classification of the dam at any time.

20 * * *

1 § 1110. RULEMAKING

2 The Commissioner of Environmental Conservation shall adopt rules to
3 implement the requirements of this chapter for dams under the jurisdiction of
4 the Department. The rules shall include:

5 (1) a standard or regulatory threshold under which a dam is exempt from
6 the registration or inspection requirements of this chapter;

7 (2) standards for:

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

10 (B) operation and maintenance of a dam;

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

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

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

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

15 including guidance on how to develop an emergency action plan, the content of

16 a plan, and when and how an emergency action plan should be updated;

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

18 (4) a process by which a person owning legal title to a dam or a person

19 owning the land on which the dam is located shall register a dam and record

20 the existence of the dam in the lands records; and

1 (5) requirements for the person owning legal title to a dam or the person
2 owning the land on which the dam is located to conduct inspections of the
3 dam.

4 § 1111. ~~NATURAL RESOURCES ATLAS; DAM STATUS~~

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

8 [Repealed.]

9 Sec. 2. TRANSFER OF RECORDS

10 Prior to the effective date of Sec. 1 of this act, the Public Utility
11 Commission shall transfer copies of all records pertaining to nonfederal power
12 dams to the Department of Environmental Conservation.

13 Sec. 3. DEPARTMENT OF ENVIRONMENTAL CONSERVATION

14 POSITIONS; APPROPRIATION

15 (a) Three new permanent classified Dam Engineer positions are created at
16 the Department of Environmental Conservation for the purpose of carrying out
17 this act.

18 (b) The sum of \$375,000.00 is appropriated to the Department of
19 Environmental Conservation from the General Fund for the positions
20 established in subsection (a) of this section.

1 Sec. 4. TRANSITION

2 (a) On or before January 1, 2025, the Secretary of Natural Resources shall
3 publish a schedule under which it will assume jurisdiction of the 21 dams to be
4 transferred from the jurisdiction of the Public Utility Commission to the
5 Agency of Natural Resources under this act. The schedule shall be based on
6 the presumed hazard classification of each dam:

7 (1) On July 1, 2025, the Agency shall assume jurisdiction over dams
8 with a high hazard classification.

9 (2) On January 1, 2026, the Agency shall assume jurisdiction over all
10 other dams.

11 (b)(1) To the extent the Public Utility Commission continues to exercise
12 authority over a dam under this chapter during the transition schedule under
13 subsection (a) of this section, the Public Utility Commission shall apply the
14 dam design standard rules adopted by the Department of Environmental
15 Conservation.

16 (2) The Public Utility Commission shall continue to exercise authority
17 over any activities involving electric generation facilities at a dam that require
18 authorization under 30 V.S.A. § 248, unless such activities are regulated by the
19 Federal Energy Regulatory Commission.

1 Sec. 5. EFFECTIVE DATE

2 This act shall take effect on July 1, 2024, provided that transition of
3 jurisdiction over a dam shall occur according to the schedule required under
4 Sec. 4 of this act.