

1 H.167

2 Introduced by Representatives Sheldon of Middlebury, McCullough of

3 Williston, and Dolan of Waitsfield

4 Referred to Committee on

5 Date:

6 Subject: Conservation and development; fish and wildlife; Agency of Natural

7 Resources; Environmental Stewardship Board

8 Statement of purpose of bill as introduced: This bill would establish the

9 Environmental Stewardship Board to oversee and consult with the Secretary of

10 Natural Resources regarding the operation and coordination of the Agency of

11 Natural Resources and the management, protection, and conservation of State

12 surface waters, wetlands, wildlife, forests, Agency of Natural Resources lands,

13 groundwater, air quality, and other natural resources managed or regulated by

14 the Agency of Natural Resources

15 An act relating to establishment of the Environmental Stewardship Board

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

17 Sec. 1. FINDINGS

18 The General Assembly finds that:

19 (1) Under the Vermont Constitution, State statute, and common law, the

20 natural resources and wildlife of the State are public resources managed by the

1 Agency of Natural Resources for the benefit of the citizens of the State, as
2 evidenced by the following:

3 (A) Under the Vermont Constitution, 10 V.S.A. § 1250, and the
4 common law public trust doctrine, the waters of the State are held in trust for
5 and shall be managed for the benefit of the citizens of the State;

6 (B) The Vermont Constitution and 10 V.S.A. § 4081 provide that the
7 fish and wildlife of Vermont are held in trust by the State for the benefit of the
8 citizens of Vermont;

9 (C) The conservation of the forests, timberlands, woodlands, and soil
10 and recreational resources of the State are declared under 10 V.S.A. § 2601 to
11 be in the public interest;

12 (D) Under 3 V.S.A. § 2807, the public lands, facilities, and
13 recreational assets of Vermont are held as public assets for the citizens of
14 Vermont and require proper management to ensure that these natural resources
15 and facilities remain viable and available for current Vermonters and all future
16 generations;

17 (E) Section 1390 of Title 10 provides that it is the policy of the State
18 that the groundwater resources of the State are held in trust for the public and
19 the State shall manage those resources for the benefit of its citizens; and

1 (F) Under 10 V.S.A. § 551, it is State policy to achieve and maintain
2 levels of air quality that will protect human health and safety, and to the
3 greatest degree practicable, prevent injury to plants, animal life, and property.

4 (2) As manager of these public resources, the Agency of Natural
5 Resources is authorized or required to maintain certain advisory or regulatory
6 boards, but these existing boards are focused on specific issues or have limited
7 authority.

8 (3) The Agency of Natural Resources also maintains and implements
9 process and procedure for soliciting and receiving public input, but the
10 Agency's public input process is largely focused on individual Agency actions,
11 rules, or publications and not on Agency operations as a whole or
12 comprehensive, long-range Agency policies or goals.

13 (4) To protect the public trust in natural resources, to provide for greater
14 public involvement and input in the management of the public's natural
15 resources, and to allow for a comprehensive science-based and coordinated
16 approach to operation of the Agency of Natural Resources, the State should
17 establish a citizen board to:

18 (A) oversee the Agency of Natural Resources regarding management
19 of the public resources of the State;

20 (B) provide guidance based on science and public input regarding the
21 operation of the Agency;

1 (C) coordinate action by the Agency and its departments; and

2 (D) develop the long-term and short-term goals for management,

3 protection, and conservation of the natural resources of Vermont.

4 Sec. 2. 3 V.S.A. chapter 51, subchapter 5 is added to read:

5 Subchapter 5. Environmental Stewardship Board

6 § 2891. DEFINITIONS

7 As used in this subchapter:

8 (1) “Agency” means the Agency of Natural Resources and all of its
9 departments and divisions.

10 (2) “Board” means the Environmental Stewardship Board.

11 (3) “Secretary” means the Secretary of Natural Resources and all
12 Commissioners serving under the Secretary of Natural Resources.

13 § 2892. ENVIRONMENTAL STEWARDSHIP BOARD

14 (a) Establishment. The Environmental Stewardship Board is established
15 within the Agency to advise and consult with the Secretary regarding the
16 operation of the Agency and the management, protection, and conservation of
17 State surface waters, wetlands, wildlife, forests, lands, groundwater, air
18 quality, and other natural resources managed or regulated by the Agency for
19 the benefit of the citizens of the State.

20 (b) Functions and duties. The Environmental Stewardship Board shall:

1 (1) advise and assist the Secretary in formulating Agency policies and
2 goals that are science-based, protective of the public interest, and promote
3 natural function;

4 (2) advise the Agency in the performance of its functions and duties,
5 including long-range policies for the operation and coordination of the Agency
6 and the management, protection, and conservation of the natural resources of
7 Vermont;

8 (3) review rules and rule amendments proposed by the Agency or the
9 Fish and Wildlife Board to determine if they are consistent with science, to
10 determine if they are consistent with the long-term health of Vermont's
11 ecosystems, to determine if they are consistent with State goals or policies, and
12 to recommend revision to the proposed rules or proposed rule amendments or
13 recommend adoption of additional rules;

14 (4) recommend Agency policies, actions, land conservation, or other
15 measures based on the Vermont Conservation Design tool that are intended to
16 maintain and enhance ecological function across Vermont's landscape in a
17 manner that conserves biological diversity and contributes to the State
18 achieving the greenhouse gas reduction goals set forth in 10 V.S.A. § 578;

19 (5) recommend to the General Assembly science-based policies for the
20 management of the wildlife of the State, provided that the Fish and Wildlife
21 Board shall retain authority under 10 V.S.A. § 4082 to adopt rules for the

1 regulation of the taking of game fish, wild game, and fur-bearing animals that
2 have open and closed seasons;

3 (6) recommend expenditures from the Land and Facilities Trust Fund,
4 under section 2807 of this title, or from the Vermont Housing and
5 Conservation Trust Fund, under 10 V.S.A. § 312, for Agency acquisition and
6 conservation of important natural areas and recreational lands;

7 (7) review application and enforcement of law by the Agency in local
8 communities throughout the State to ensure, to the extent practicable, that
9 enforcement of law is uniform across businesses, activities, and geographic
10 areas and that no community in the State is disparately affected by
11 environmental impacts, enforcement, or lack of enforcement;

12 (8) hold regular meetings with the Secretary or designee for the purpose
13 of fulfilling the charge of the Board and coordinating Agency actions;

14 (9) form, at its discretion, stakeholder groups with relevant areas of
15 expertise to obtain information and make recommendations on the
16 management of public resources in the State; and

17 (10) recommend to the General Assembly policies, laws, or amendments
18 related to the management of public resources in the State.

19 (c) Membership; terms.

20 (1) The Environmental Stewardship Board shall be composed of the
21 following nine members appointed by the Governor;

1 (A) one member of the Fish and Wildlife Board;

2 (B) one public member of the Endangered Species Committee;

3 (C) one public member of the Vermont Housing and Conservation
4 Board;

5 (D) a representative of a statewide land conservation organization
6 committed to the protection of biodiversity;

7 (E) a representative of a statewide organization committed to the
8 protection of water;

9 (F) a representative of a statewide organization committed to
10 climate protection or reduction of air pollution;

11 (G) a representative of a statewide organization committed to forest
12 conservation;

13 (H) a representative of a statewide organization committed to the
14 reduction of toxic substances or pollution; and

15 (I) a representative of a statewide organization committed to
16 improved management or reduction of solid waste.

17 (2)(A) The Governor shall appoint the members of the Board for
18 staggered three-year terms and until successors are appointed.

19 (B) On the death, resignation, or removal of any person appointed to
20 the Board, the Governor shall appoint a replacement member to serve for the
21 remainder of the unexpired term.

1 (C) A person may not serve more than two consecutive three-year
2 terms, provided that a member who is appointed to fill a vacancy occurring
3 during a term may serve two consecutive full terms in addition to the
4 unexpired portion of the term during which the member is first appointed.

5 (D) A member's term of office shall commence on February 1 of the
6 year in which the member is appointed.

7 (E) The Board shall select a chair from among its members at its first
8 meeting and at the first Board meeting of every year. The Chair shall have
9 general charge of the functioning of the Board, including requests for staff or
10 staff assistance from the Agency.

11 (d) Assistance; staffing. The Board shall have all necessary administrative,
12 scientific, technical, and legal assistance of the Agency.

13 (e) Reimbursement. Members of the Board shall be entitled to per diem
14 compensation and reimbursement of expenses incurred in performance of their
15 duties as Board members as permitted under 32 V.S.A. § 1010. These
16 payments shall be made from monies appropriated to the Agency.

17 (f) Budget; administration; funding.

18 (1) The Environmental Stewardship Board shall be assigned to the
19 Agency for budgetary and administrative purposes.

20 (2) The Environmental Stewardship Board shall present a proposed
21 budget to the Secretary before September 15 of each year.

1 (3) The Environmental Stewardship Board may pursue or solicit funding
2 from diverse sources outside State government to fund land acquisition or
3 conservation by the Agency under subdivision (b)(4) of this section or for any
4 other recommendation issued by the Board in the fulfillment of its functions
5 and duties under this section.

6 (g) Report. Annually, on or before January 15, the Environmental
7 Stewardship Board shall submit a written report to the Governor and the House
8 Committee on Natural Resources, Fish and Wildlife and the Senate Committee
9 on Natural Resources and Energy summarizing the Board's activities and
10 accomplishments in the previous calendar year and recommending any
11 enactment of law, adoption of rule, amendment of law, or adoption of policy
12 related to the management of public resources in the State. The provisions
13 of 2 V.S.A. § 20(d) shall not apply to this report.

14 (h) Open meetings; records. Meetings of the Environmental Stewardship
15 Board shall be subject to the requirements of the Open Meeting Law and
16 records produced by the Board are subject to inspection and copying under the
17 Public Records Act

18 § 2893. ENVIRONMENTAL STEWARDSHIP BOARD; RULE REVIEW

19 (a) The Secretary or the Fish and Wildlife Board shall not file a proposed
20 rule or proposed rule amendment with the Secretary of State under chapter 25
21 of this title unless and until the proposed rule or proposed rule amendment is

1 filed with the Environmental Stewardship Board according to the requirements
2 of this section and the Board votes to approve the proposed rule or proposed
3 rule amendment be filed with the Secretary of State.

4 (b) At least 15 days prior to filing a proposed rule or proposed rule
5 amendment under section 838 of this title or filing an emergency rule under
6 section 844 of this title, the Secretary or the Fish and Wildlife Board shall
7 submit any proposed rule or proposed rule amendment to the Environmental
8 Stewardship Board. The Environmental Stewardship Board shall review the
9 proposed rule or proposed rule amendment for consistency with science and
10 State goals and policies, including whether the proposed rule or proposed rule
11 amendment is within the public interest.

12 (c) If the Environmental Stewardship Board votes that a rule is not
13 consistent with science, is not consistent with State goals and policies, or is not
14 consistent with the long-term health of Vermont's ecosystems, the Board shall
15 not approve the rule for filing with the Secretary of State and shall recommend
16 how the proposed rule or proposed rule amendment should be revised. If the
17 Environmental Stewardship Board votes to approve the rule, the Secretary or
18 the Fish and Wildlife Board may, but is not required to, file the proposed rule
19 or proposed rule amendment with the Secretary of State under section 838 or
20 844 of this title.

1 (d) Meetings of the Environmental Stewardship Board shall be subject to
2 the requirements of the Open Meeting Law, and proposed rules or proposed
3 rule amendments filed with the Board shall be posted for public review.

4 (e) The Environmental Stewardship Board may also conduct public
5 hearings to review existing rules of the Agency or the Fish and Wildlife Board
6 to determine if the rule is consistent with science, is consistent with State goals
7 and policies, or is consistent with the long-term health of Vermont's
8 ecosystems. If the Board determines that an existing rule is not consistent with
9 science, is not consistent with State goals and policies, or is not consistent with
10 the long-term health of Vermont's ecosystems, the Board shall recommend to
11 the Secretary or the Fish and Wildlife Board how the rule should be revised
12 and shall submit a copy of its findings to the Legislative Committee on
13 Administrative Rules.

14 Sec. 3. 3 V.S.A. § 2803 is amended to read:

15 § 2803. ADVISORY CAPACITY

16 (a) ~~All~~ Unless otherwise provided by statute, all boards, committees,
17 councils, activities, and departments ~~which~~ that under this chapter are a part of
18 the Agency shall be advisory only, except as hereinafter provided, and the
19 powers and duties of such boards, committees, councils, activities, and
20 departments, including administrative, policy making, rulemaking, and

1 regulatory functions, shall vest in and be exercised by the Secretary of the
2 Agency.

3 (b) Notwithstanding subsection (a) of this section or any other provision of
4 this chapter, the Fish and Wildlife Board ~~and~~, the Natural Resources Board,
5 and the Environmental Stewardship Board shall retain and exercise all powers
6 and functions given to them by law ~~which~~ that are of regulatory or quasi-
7 judicial nature, including the power to adopt, amend, and repeal rules ~~and~~
8 ~~regulations~~, to conduct hearings, to adjudicate controversies, and to issue and
9 enforce orders, in the manner and to the extent to which those powers are given
10 to those respective boards by law.

11 (c) [Repealed.]

12 Sec. 4. 10 V.S.A. § 4081 is amended to read:

13 § 4081. POLICY

14 (a)(1) As provided by Chapter II, § 67 of the Constitution of the State of
15 Vermont, the fish and wildlife of Vermont are held in trust by the State for the
16 benefit of the citizens of Vermont and shall not be reduced to private
17 ownership. The State of Vermont, in its sovereign capacity as a trustee for the
18 citizens of the State, shall have ownership, jurisdiction, and control of all of the
19 fish and wildlife of Vermont.

20 (2) The Commissioner of Fish and Wildlife shall manage and regulate
21 the fish and wildlife of Vermont in accordance with the requirements of this

1 part and the rules of the Fish and Wildlife Board for the taking of fish and wild
2 game. The protection, propagation control, management, and conservation of
3 fish, wildlife, and fur-bearing animals in this State are in the interest of the
4 public welfare. The State, through the Commissioner of Fish and Wildlife,
5 shall safeguard the fish, wildlife, and fur-bearing animals of the State for the
6 people of the State, and the State shall fulfill this duty with a constant and
7 continual vigilance.

8 (b) Notwithstanding the provisions of 3 V.S.A. § 2803, the Fish and
9 Wildlife Board shall be the State agency charged with ~~carrying out the~~
10 ~~purposes of this subchapter~~ adopting rules for the taking of fish and wild game
11 under this part.

12 (c) An abundant, healthy deer herd is a primary goal of fish and wildlife
13 management. The use of a limited unit open season on antlerless deer shall be
14 implemented only after a scientific game management study by the
15 Department of Fish and Wildlife supports such a season.

16 * * *

17 Sec. 5. 10 V.S.A. § 4082 is amended to read:

18 § 4082. VERMONT FISH AND WILDLIFE ~~REGULATIONS~~ RULES

19 (a) The Board may adopt rules, under 3 V.S.A. chapter 25, to be known as
20 the “Vermont Fish and Wildlife Regulations” for the regulation of ~~fish and~~
21 ~~wild game~~ and the taking ~~thereof~~ of fish and wild game except as otherwise

1 specifically provided by law. The rules shall be designed to maintain the best
2 health, population, and utilization levels of the regulated species and of other
3 necessary or desirable species that are ecologically related to the regulated
4 species. The rules shall be supported by investigation and research conducted
5 by the Department on behalf of the Board.

6 (b)(1) Except as provided for under subdivision (2) of this subsection, the
7 Board annually may adopt rules relating to the ~~management~~ taking of
8 migratory game birds; and shall follow the procedures for rulemaking
9 contained in 3 V.S.A. chapter 25. For each ~~such~~ rule, the Board shall conduct
10 a hearing but, when necessary, may schedule the hearing for a day before the
11 terms of the rule are expected to be determined.

12 * * *

13 Sec. 6. TRANSITION; IMPLEMENTATION

14 (a) The appointments to the Environmental Stewardship Board required
15 under 3 V.S.A. § 2892(c) shall be completed on or before September 1, 2021.

16 (b) The Environmental Stewardship Board shall convene its first meeting
17 on or before October 1, 2021.

18 Sec. 7. EFFECTIVE DATE

19 This act shall take effect on July 1, 2021.