



**Bills of Potential Interest
5/8/2011**

The 2011 legislative session adjourned on May 6, 2011. The status of bills of potential interest at the end of this first half of the biennium are as follows:

H.020 - Public Trust

Among other provisions, provides that the public trust doctrine that applies to the navigable rivers, streams, brooks, and creeks of the state shall extend to the 10-year high-water mark.

Status: in House Fish, Wildlife and Water Resources (HFWWR)

Notes: This is a re-introduction of H.128 from last year, which received no action in HFWWR.

May 8: Still in House Fish, Wildlife & Water Resources

H.024 - Maidstone Lake Road - PASSED

Transfers ownership of the Maidstone Lake Road from the Agency of Natural Resources to the Town of Maidstone.

Status: in House Corrections and Institutions

Notes: FOVLAP has notified the Maidstone Lake Association of this bill.

April 10: Still in House Corrections and Institutions

April 24: On April 13 an amended bill passed the House. It was read for the first time in the Senate and referred to the **Senate Committee on Rules**.

May 8: The bill was passed as written by the Senate on May 4.

As passed by the House and Senate, the bill reads:

Sec. 1. MAIDSTONE LAKE ROAD

(a) Notwithstanding any law, including 19 V.S.A. § 309b, the town of Maidstone is authorized to accept that 5.93-mile portion of the existing road known as Maidstone Lake Road beginning at Route 102 and ending at the entrance to Maidstone State Park, including the segment located within the town of Brunswick, as a Class 3 town highway of the town of Maidstone, even though the road does not meet the road and bridge standards adopted by the town of Maidstone pursuant to 19 V.S.A. § 309b.

(b) Of the funds appropriated to the agency of natural resources in Sec. 20 of No. 43 of the Acts of the 2009 Adj. Sess. (2010), for the purpose of upgrading and maintaining the road, the balance remaining as of January 1, 2011 shall be transferred to the town of Maidstone and shall be used by the town for that purpose.

H. 026 - Phosphorus and Nitrogen in Fertilizers – PASSED

Prohibits the application of fertilizer containing phosphorus or nitrogen to nonagricultural turf unless certain conditions are satisfied. The bill also would prohibit the application of any fertilizer to an impervious surface or within 25 feet of a water of the state.

Status: in HFWWR

Notes: The Agency of Natural Resources has testified in favor of the bill with revisions, such as deleting the requirements regarding nitrogen, excluding golf courses, and prohibiting the sale rather than the use to make enforcement more feasible.

Feb 13: Still in Committee on Fish, Wildlife & Water Resources. The Committee has heard considerable testimony and is preparing a draft for Committee vote.

Feb 27: An amended bill passed the House on 2/24/11 (**Yeas = 114, Nays = 24**) and moved to the Senate

March 13: Read 1st time in the Senate & referred to Senate Natural Resources and Energy

March 27: Still in Senate Natural Resources and Energy; the Committee is hearing testimony on the bill

April 10: Entered on Senate Notice Calendar. Favorable report with proposal of amendment by Natural Resources and Energy Committee.

As passed the House, among other things H.026 would regulate the sale and use of fertilizers containing phosphorus on turf (defined as land planted in closely-mowed, managed grasses, including residential and commercial property and publicly-owned land). Agricultural lands and golf courses are not included, but golf courses would be required to submit nutrient management plans for the use of fertilizer to the Agency of Agriculture, Food and Markets. The use of fertilizer containing phosphorus would be prohibited on lawns (and other turf) unless applied to new lawn, damaged lawn, or lawn that is deficient in phosphorus as indicated by a soil test. The use on lawns of fertilizer labeled for use on turf and containing less than 15 percent slow-release nitrogen would be prohibited. The use of all fertilizers would be prohibited on impervious surfaces, on lawns before April 1 or after October 15 or at any time when the ground is frozen, and on lawns (and other turf) within 25 feet of state waters.

April 24: On April 21, an amended bill was passed by the Senate.

As passed by the Senate, among other things H.026 would regulate the use of fertilizers containing phosphorus on turf (defined as land planted in closely-mowed, managed grasses, including residential and commercial property and publicly-owned land, parks and recreation areas). Agricultural lands and golf courses are not included. The use of fertilizer containing phosphorus would be prohibited on lawns (and other turf) unless the lawn is deficient in phosphorus as indicated by a soil test or the fertilizer is labeled starter fertilizer and used only during the first growing season to establish grass. The use of all fertilizers would be prohibited on impervious surfaces, on lawns before April 1 or after October 15 or at any time when the ground is frozen, and on lawns (and other turf) within 25 feet of state waters. Retailers must display non-phosphorus fertilizer separately from phosphorus fertilizer and post signs in the retail location that states “Phosphorus runoff poses a threat to water quality. Most Vermont lawns do not benefit from fertilizer containing phosphorus. Under Vermont law, fertilizer containing phosphorus shall not be applied to lawn unless applied to new lawn or lawn that is deficient for phosphorus as indicated by a soil test.”

May 8: On April 26, a Conference Committee was appointed to reconcile the bill as passed by the House and Senate. On May 3, the Senate accepted and adopted the Conference Committee Report, and on May 4, the House considered and adopted the same Conference Committee Report.

The Conference Committee Report recommended that the House accede to the Senate proposal of amendment (see above), and that the bill be further amended as follows:

First: In Sec. 1, 10 V.S.A. § 1266b, by striking out subsection (a) in its entirety and inserting in lieu thereof the following:

(a) Definitions. As used in this section:

(1) “Compost” means a stable humus-like material produced by the controlled biological decomposition of organic matter through active management, but shall not mean sewage, septage, or materials derived from sewage or septage.

(2) “Fertilizer” shall have the same meaning as in 6 V.S.A. § 363(5).

(3) “Impervious surface” means those manmade surfaces, including paved and unpaved roads, parking areas, roofs, driveways, and walkways, from which precipitation runs off rather than infiltrates.

(4) “Manipulated animal or vegetable manure” means manure that is ground, pelletized, mechanically

dried, supplemented with plant nutrients or substances other than phosphorus or phosphate, or otherwise treated to assist with the use of manure as fertilizer.

(5) "Nitrogen fertilizer" means fertilizer labeled for use on turf in which the nitrogen content consists of less than 15 percent slow-release nitrogen.

(6) "Phosphorus fertilizer" means fertilizer labeled for use on turf in which the available phosphate content is greater than 0.67 percent by weight, except that "phosphorus fertilizer" shall not include compost or manipulated animal or vegetable manure.

(7) "Slow release nitrogen" means nitrogen in a form that is released over time and that is not water-soluble nitrogen.

(8)(A) "Turf" means land planted in closely mowed, managed grasses, including residential and commercial property and publicly owned land, parks, and recreation areas.

(B) "Turf" shall not include:

(i) pasture, cropland, land used to grow sod, or any other land used for agricultural production; or
(ii) private and public golf courses.

(9) "Water" or "water of the state" means all rivers, streams, creeks, brooks, reservoirs, ponds, lakes, springs, and all bodies of surface waters, artificial or natural, which are contained within, flow through, or border upon the state or any portion of it.

(10) "Water-soluble nitrogen" means nitrogen in a water-soluble form that does not have slow release properties.

Second: In Sec. 1, 10 V.S.A. § 1266b, by adding a new subsection (c) to read as follows:

(c) Application of nitrogen fertilizer. No person shall apply nitrogen fertilizer to turf.

And by relettering the subsequent subsections to be alphabetically correct.

Third: In Sec. 5, by striking out subsection (b) in its entirety and inserting in lieu thereof the following:

(b) Secs. 1 (application of fertilizer), 2 (golf course management plans) and 3 (judicial bureau offense) of this act shall take effect on January 1, 2012, except that 10 V.S.A. § 1266b(b)(2) (agency of agriculture, food and markets soil test authorization) shall take effect on passage.

H.035 - Pesticide Permits/NPDES Permits

Requires a state discharge permit for pesticide applications for: mosquito control, aquatic nuisance control, forest canopy pest control, and control of pests within 50 feet of state water or significant wetland.

Status: in HFWWR

Notes: Redundant with existing state and federal regulations. Only significant difference is defining "near" as 50 feet. See EPA's new general permit for pesticide discharges -

http://cfpub.epa.gov/npdes/home.cfm?program_id=410

May 8: Still in House Fish, Wildlife & Water Resources

H.130 - Forfeiture of EPA Clean Water Act Delegation

Requires ANR to report to the legislature in January 2012 regarding the environmental and economic benefits of forfeiting the authority delegated by the U.S. Environmental Protection Agency to the Agency of Natural Resources to implement and enforce the federal Clean Water Act.

Status: in HFWWR

Notes: If Vermont forfeited the delegated authority, USEPA would implement and enforce the Clean Water Act in Vermont. This is the current situation in some other states.

May 8: Still in House Fish, Wildlife & Water Resources

H.139 - Maximum Motorboat Noise Levels

Changes the standard for maximum motorboat noise level; prohibits the manufacture or sale in Vermont of motorboats that exceed the noise level; and authorizes enforcement officers to direct violating motorboats to be moored.

Status: in House Transportation

Notes: As the method of measuring the noise is being changed (new: from the shoreline or stationary vs. old: from 50 feet away in a normal operating environment), FOVLAP does not know whether the noise level that people would generally hear from the motorboats is actually being changed
May 8: Still in House Transportation

S.023 - Revolving Loan Fund Stormwater Priority

Gives first priority for financing or assistance from the special environmental revolving loan fund to municipalities that have established or approved establishment of a stormwater utility or similar regulatory mechanism to address management of a stormwater-impaired water within the municipality.

Status: in Senate Natural Resources and Energy (SNRE)

May 8: Still in Senate Natural Resources and Energy

S.025 - Pesticide Permits/NPDES Permits (see H.035)

Requires a state discharge permit for pesticide applications for: mosquito control, aquatic nuisance control, forest canopy pest control, and control of pests within 50 feet of state water or significant wetland.

Status: in SNRE

Notes: Identical to H.035 above

May 8: Still in Senate Natural Resources and Energy

S.035 - Phosphorus in Fertilizers

Prohibits the application of fertilizer containing phosphorus to nonagricultural turf unless a soil test shows phosphorus-deficient soil or it is the first growing season for newly-established grass. The bill also would prohibit the application of any fertilizer to an impervious surface.

Status: in SNRE

Notes: This bill differs in several ways from H.026. Among the differences: It does not regulate nitrogen in fertilizers, it does not prohibit the application of phosphorus fertilizers within 25 feet of state waters, and it places display requirements on retailers selling phosphorus fertilizers.

May 8: Still in Senate Natural Resources and Energy

No action is anticipated on this bill. The provisions of this bill have been included in an amended H.026 that passed the House and Senate.

Bills introduced 1/31/2011 through 2/13/2011

H.159 - Lake Champlain Bridge Fishing Access

Transfers management of the asphalt landing where automobiles enter the temporary ferry at Chimney Point to the Department of Fish and Wildlife to be maintained as a fishing access area once the new Lake Champlain Bridge is completed.

Status: in House Fish, Wildlife & Water Resources (HFWWR)

May 8: Still in House Fish, Wildlife & Water Resources

H.163 - Fishing Tournaments

Requires fishing tournament organizers to obtain an annual permit, report each tournament held during the year at least 30 days before the event, and provide information to the Department of Fish and Wildlife after the event (number of tickets sold, number of anglers registering catch, number of each fish species registered, and number of registered fish released alive).

Status: in HFWWR

May 8: Still in House Fish, Wildlife & Water Resources

H.192 - Replacement of VT Route 65 Floating Bridge Over Sunset Lake in Brookfield

Adds a project to the state's fiscal year 2011 transportation program for replacement of the VT Route 65 floating bridge over Sunset Lake in Brookfield and authorizes funding for preliminary engineering.

Status: in House Transportation

May 8: Still in House Transportation

H.210 - Felt-soled Boots and Waders Consumer Education

Requires Vermont retail stores selling felt-soled boots and waders to inform customers of the ban on the use of these products prior to sale.

Status: in HFWWR

Notes: The ban on the use of felt-soled boots and waders was passed in 2010 (to go into effect on April 1, 2011) to slow the spread of aquatic diseases and aquatic nuisance species such as didymo. Didymo, also known as rock snot, is an invasive algae that can be spread by the water that gets soaked into felt-soled boots and waders.

May 8: Still in House Fish, Wildlife & Water Resources

H.211 - Ban on Felt-soled Boots and Waders

Delays the implementation of the ban on the use of felt-soled boots and waders in state waters for one year (until April 1, 2012) and requires the Department of Fish and Wildlife to distribute informational material and hold a minimum of three public meetings before the ban goes into effect.

Status: in HFWWR

Notes: The ban on the use of felt-soled boots and waders was passed in 2010 (to go into effect on April 1, 2011) to slow the spread of aquatic diseases and aquatic nuisance species such as didymo. Didymo, also known as rock snot, is an invasive algae that can be spread by the water that gets soaked into felt-soled boots and waders.

May 8: Still in House Fish, Wildlife & Water Resources

H.212 - Use of Lead Sinkers

Allows the sale of lead sinkers in Vermont and the use of lead sinkers for fishing in Vermont streams and rivers. The use of lead sinkers in inland lakes or ponds in Vermont would continue to be prohibited. "Sinker" means any device that weighs one-half ounce or less and is attached to a fishing line for the purpose of sinking the line, and does not include other lead fishing-related items such as weighted fly line, lead-core fishing line, downrigger cannon balls, weighted flies, lures, spoons, or jig heads.

Status: in HFWWR

Notes: The term "inland lakes or ponds" generally does not include Lake Champlain. Thus, as this bill is drafted, it appears to be silent regarding the use of lead sinkers in Lake Champlain.

May 8: Still in House Fish, Wildlife & Water Resources

H.213 - Use and Transport of Baitfish

Allows baitfish harvested from or used in Vermont waters to be transported from one access area on a water to another access point on the same water, provided that the baitfish are not used on another body of water after transport from the original water.

Status: in HFWWR

May 8: Still in House Fish, Wildlife & Water Resources

Bills introduced 2/14/2011 through 2/28/2011

H. 258 - Public Participation in Environmental Enforcement Proceedings

Requires the Agency of Natural Resources, the Land Use Panel, or the Natural Resources Board to publish draft assurances of discontinuance (AODs) or administrative orders (AOs) for notice on the relevant website and provide at least 20 days during which an aggrieved person may comment on them. The bill prohibits the state from signing an AOD or AO until any additional filings or proceedings are complete, including those made subsequent to a timely motion for intervention. The bill also allows for public notice and comment on certain environmental tickets issued by the Agency of Natural Resources.

Status: in House Natural Resources and Energy

Updated Notes: FOVLAP has learned from the Agency of Natural Resources' Environmental Enforcement Division Director that as a state agency delegated by the USEPA to enforce the

Clean Water Act and other federal laws, VTDEC is required to provide an opportunity for public participation in environmental enforcement proceedings. In the past there has not been an opportunity for public participation; this bill would correct that deficiency. The VTDEC participated in the drafting of this bill, supports it, and does not believe that it will delay enforcement in any significant way.

March 13: Still in House Natural Resources and Energy, which has been hearing testimony on the bill.

March 27: On March 22, pending the reading of the Natural Resources and Energy Committee's report, on a motion of Rep. Ellis of Waterbury, House action on the bill was postponed until

March 29: On March 24, Rep. Grad of Moretown moved to suspend the rules to take the bill up for immediate consideration and subsequently moved to commit the bill to the Judiciary Committee. Both motions were approved and the bill is now in House Judiciary.

April 10: On April 8, the bill was placed on the House Action Calendar. This action was postponed until April 12 as moved by Rep. Ellis of Waterbury.

April 24: On April 12 an amendment recommended by the House Natural Resources and Energy Committee, further amended by the House Judiciary Committee, was approved and the bill was read for the second time. On April 13, numerous amendments were offered and disagreed to prior to the third reading of the bill. Rep. Kilmartin of Newport City moved to amend the bill by slightly changing the definition of "post," which was agreed to. The bill was then read for the third time and passed the House with a roll call vote of 109 Yeas, 25 Nays. On April 15 it was read for the first time in the Senate and referred to the **Senate Committee on Rules**. To view the bill as passed by the House, go to <http://www.leg.state.vt.us/docs/2012/bills/House/H-258.pdf>

May 8: Still in Senate Committee on Rules

H. 343 - Lake Champlain Water Quality

Requires the Agency of Natural Resources (ANR) to (1) inspect all concentrated animal feeding operations in the St. Albans Bay watershed to determine if such operations require a discharge permit; (2) seek funding under the federal Water Resources Development Act for restoration projects in the Lake Champlain watershed; and (3) conduct a study of the feasibility and cost of constructing sewer systems in the St. Albans Bay watershed. This bill also establishes a Lake Champlain watershed team within ANR to develop and recommend management measures to reduce phosphorus pollution in the Lake Champlain watershed, initially in the St. Albans Bay watershed. The bill also requires that the Agency of Agriculture, Food and Market's Accepted Agricultural Practices be amended to require all dairy or livestock operations, regardless of size, to develop and implement a nutrient management plan designed to prevent nutrient discharges to state waters, and be amended to require the exclusion of livestock from state waters.

Status: in House Fish, Wildlife & Water Resources

May 8: Still in House Fish, Wildlife & Water Resources.

Constitutional Proposition: PR0002 (introduced 1/25/2011)

This proposal would amend Vermont's Constitution to provide a set of environmental rights. Section 2. Article 23 of Chapter I of the Vermont Constitution would be added to read:

Article 23. RIGHT TO CLEAN WATER, CLEAN AIR, AND NATURE

That the people shall have the right to clean water and air, to a natural environment uncompromised by manufactured substances that are toxic and unhealthy, and to the enjoyment of nature, forests, wilderness, and wildlife.

Status: in Senate Natural Resources and Energy

May 8: Still in Senate Natural Resources and Energy

Bills introduced 3/1/2011 through 3/13/2011

H. 393 - Winooski River Fishing Regulations

Repeals the slot limits for the Winooski River and requires an annual open season on the taking of fish in the Winooski River between October 31 and the second Saturday of April provided that fishing is done with artificial lures and bait only and all trout caught are released.

Status: Read 1st time and referred to the Committee on Fish, Wildlife & Water Resources

May 8: Still in House Fish, Wildlife & Water Resources

H. 407 - Groundwater Withdrawal Royalties

Imposes a groundwater withdrawal royalty of \$0.28 per gallon of groundwater withdrawn from a well or spring within Vermont for the purpose of sale or the purpose of sale to another for resale.

Status: Read 1st time and referred to the Committee on Fish, Wildlife & Water Resources

May 8: Still in House Fish, Wildlife & Water Resources

H. 409 - Control of (Primarily Terrestrial) Invasive Plant Species

Prohibits the propagation, transplantation, importation or sale of nine invasive terrestrial plant species – Autumn olive, Japanese stilt grass, Mile-a-minute weed, Japanese arrowroot, Multiflora rose, Japanese barberry, Common barberry, Norway maple, and Winged euonymus.

Status: Read 1st time and referred to the Committee on Agriculture

May 8: Still in House Agriculture

H. 423 - Wetlands Management

Amends Vermont's wetlands rules by requiring a permit to conduct activities in naturally-occurring wetlands, but allowing activities in manmade wetlands unless otherwise prohibited by rule. "Manmade wetlands" are wetlands that were created solely as a result of human activity. Also repeals wetland designations except Class I.

Status: Read 1st time and referred to the Committee on Fish, Wildlife & Water Resources

Notes: A bill revising wetlands management in Vermont passed the Legislature during the last biennium – Act 31. The current bill would repeal key aspects of that law and would significantly weaken Vermont's wetlands protection program. Many wetlands adjacent to lakes in Vermont were created when lake water levels were raised by dams. These wetlands would most likely lose protection under the proposed bill.

May 8: Still in House Fish, Wildlife & Water Resources

Bills introduced 3/14/2011 through 3/27/2011: No Lakes and Ponds-related Bills

Bills introduced 3/28/2011 through 4/10/2011

H. 449 – State Fish

Designates brook trout (cold water) and walleye pike (warm water) as the state fish of Vermont.

Status: in House Fish, Wildlife and Water Resources

May 8: Still in House Fish, Wildlife and Water Resources

Bills introduced 4/24/2011 through 5/08/2011: No Lakes and Ponds-related Bills

A total of 571 bills have been introduced to-date (460 in the House, 111 in the Senate); 3 constitutional propositions have been introduced to-date.