

1 Introduced by Senator Miller of Chittenden District  
2 Referred to Committee on  
3 Date:  
4 Subject: Conservation; common assets trust fund  
5 Statement of purpose: This bill proposes to make it clear that state policy is to  
6 protect certain common assets (such as air and water) for the benefit of present  
7 and future generations, and to establish a framework pursuant to which certain  
8 users of those common assets may be assessed fees that would be deposited  
9 into a common assets trust fund which would be managed so as to protect  
10 those assets and serve the interests of present and future people of the state. It  
11 proposes to provide that the common assets trust fund would be managed by a  
12 board of trustees, appointed according to the process established in the bill, in  
13 the interest of the beneficiaries. It proposes to establish an advisory committee  
14 to recommend to the legislature ways in which the framework could be  
15 implemented so as to serve the purposes expressed in the bill.

16 AN ACT RELATING TO ESTABLISHING A COMMON ASSETS  
17 TRUST FUND

18 It is hereby enacted by the General Assembly of the State of Vermont:  
19

1 Sec. 1. 10 V.S.A. Chapter 166 is added to read:

2 CHAPTER 166. COMMON ASSETS TRUST FUND

3 § 7161. LEGISLATIVE FINDINGS

4 The general assembly finds:

5 (1) The public trust doctrine, which dates back to Roman civil law,  
6 historically was codified in the Institutes of Justinian, which assured the  
7 citizens of Rome that “By the law of nature these things are common to all  
8 mankind – the air, running water, the sea, and consequently the shore of the  
9 sea. No one, therefore is forbidden to approach the seashore, provided that he  
10 respects habitations, monuments, and the buildings, which are not, like the sea,  
11 subject only to the law of nations.”

12 (2) As applied through English common law, which was incorporated  
13 into the common law of the United States and into the common law of the state  
14 of Vermont, the public trust doctrine provides that public trust lands, waters,  
15 and living resources in a state are held by the state in trust for the benefit of all  
16 the people, and establishes the right of the public to enjoy fully public trust  
17 lands, waters, and living resources for a wide variety of recognized public uses.

18 (3) The Declaration of Independence built in part upon the public trust  
19 doctrine, when it declared: “We hold these truths to be self-evident, that all  
20 men are created equal, that they are endowed by their Creator with certain

1 unalienable Rights, that among these are Life, Liberty and the pursuit of  
2 Happiness.”

3 (4) The list of “unalienabled” Rights listed in the Declaration of  
4 Independence is not an exclusive list, as the terms of the Declaration show a  
5 clear intent that life, liberty, and the pursuit of happiness are “among” the  
6 unspecified, other inalienable rights that are endowed upon all humans by their  
7 Creator.

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

11 (6) Other common assets that have been historically protected as such  
12 include wild animals and the common ability to hunt wild animals for food.

13 (7) As society moves into modern times, the list of things that should  
14 belong to the people in common, and should be preserved in the common  
15 interest has expanded now logically to include the radio spectrum, timber and  
16 minerals on public lands, as well as resources that because they are public in  
17 nature are difficult to exclude anyone from using, such as lighthouses, city  
18 parks, broadcast programming, and the global atmosphere. In the near future,  
19 perhaps the ability to discharge carbon into the atmosphere will be determined  
20 to be an ability that belongs to people in common, and that needs to be  
21 managed in the common interest.

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

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

9           (10) It is appropriate that the concept of the trust be explicitly expanded  
10          to address more than the navigable waters of the state, so that a legal institution  
11          is created whose managers, the trustees, have clear legal responsibilities to  
12          protect the common resources, to assure that the capital assets are not depleted,  
13          and to manage any assets that may arise from the common resources on behalf  
14          of the beneficiaries, particularly those beneficiaries who as members of future  
15          generations are unable at present to represent their own substantial interests, in  
16          a manner that includes strict fiduciary responsibilities, transparency, and  
17          accountability.

18          (11) It is appropriate to review those common assets that have a value in  
19          the market and which are appropriate to buy and sell, as part of a process to  
20          determine anew whether classes of users of common assets should be subject  
21          to clear limits and assessed fees that would be managed by the trustees in a

1 manner that preserves the common assets and serves the interests of the  
2 beneficiaries.

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

8 (13) It is appropriate for the state to establish a common assets trust fund  
9 which may be used to receive fees which may be derived from profits flowing  
10 from the use of common assets, and to create an appropriate management  
11 framework for that trust fund.

12 § 7162. COMMON ASSETS TRUST FUND CORPORATION

13 (a) There is established the Vermont common assets trust fund corporation,  
14 a public corporation and government instrumentality managed by a board of  
15 trustees. The purpose of the corporation is to manage and invest the assets of  
16 the fund in accordance with this chapter.

17 (b) The board of trustees of the Vermont common assets trust fund  
18 corporation consists of four members appointed by the governor, one  
19 appointed by the speaker of the house, and one appointed by the president pro  
20 tempore of the senate. Two of the members appointed by the governor must be  
21 heads of agencies of state government, one of whom shall be the commissioner

1 of taxes. The other two members appointed by the governor, the member  
2 appointed by the speaker of the house, and the member appointed by the  
3 president pro tempore of the senate shall be appointed from the public and may  
4 not hold any other state or federal office, position, or employment, either  
5 elective or appointive, except as a member of the armed forces of either the  
6 United States or of this state.

7 (c) The four public members of the board must have recognized  
8 competence and wide experience in finance, investments, or other business  
9 management-related fields.

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

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

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

20 (g) A vacancy on the board shall be promptly filled by appointment by the  
21 original appointing authority. An appointee to a vacancy shall hold office for

1 the balance of the term for which the appointee's predecessor on the board was  
2 appointed.

3 (h) A vacancy on the board does not impair the authority of a quorum of  
4 the board to exercise all the powers and perform all the duties of the board.

5 (i) Public members of the board receive an honorarium of \$400.00 for each  
6 day spent at a meeting of the board or at a meeting of a subcommittee of the  
7 board or at a public meeting as a representative of the board. Members of the  
8 board are entitled to per diem and travel allowances as provided by 32 V.S.A.  
9 § 1010 for members of state boards and commissions.

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

14 (k) The board shall have all the powers necessary and convenient to carry  
15 out and effectuate the purposes and provisions of this chapter, including  
16 without limitation those general powers provided to a business corporation by  
17 section 1852 of Title 11.

18 § 7163. COMMON ASSETS TRUST FUND

19 (a) There is hereby created in the state treasury a fund to be known as the  
20 common assets trust fund, to be expended by the board of trustees of the  
21 common assets trust fund. The fund shall consist of appropriations of the

1 general assembly and other sources of revenue established by law. All  
2 balances in the fund at the end of any fiscal year shall be carried forward and  
3 remain a part of the fund. Interest earned by the fund shall be deposited into  
4 the fund. Disbursements from the fund shall be made by the state treasurer on  
5 warrants drawn by the commissioner of finance and management.

6 (b) The board of trustees may authorize disbursements from the fund for  
7 the purpose of enhancing the common assets, for other purposes authorized by  
8 law, or otherwise as the board determines to be in the interests of the  
9 beneficiaries.

10 § 7164. COMMON ASSETS ADVISORY COMMITTEE

11 (a) There is created a common assets advisory committee. The committee  
12 shall consist of three members of the senate appointed by the committee on  
13 committees, three members of the house appointed by the speaker of the house,  
14 and three persons appointed by the governor.

15 (b) The advisory committee shall elect a chair, vice chair, and clerk and  
16 shall adopt rules of procedure. The chair shall rotate biennially between the  
17 house and the senate members. The committee may meet during a session of  
18 the general assembly at the call of the chair or a majority of the members of the  
19 committee. The committee may meet during adjournment subject to approval  
20 of the speaker of the house and the president pro tempore of the senate. A  
21 majority of the membership shall constitute a quorum.

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

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

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

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

11       (2) Consider:

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

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

17           (C) redirecting existing fees for the use of common assets into the  
18       common assets trust fund.

19       (3) Identify harmful subsidies that should be repealed or otherwise  
20       revised, and barriers to the state's ability to adequately protect the common  
21       assets under the status quo.

1           (4) Recommend ways that income from the trust fund may best be  
2           allocated to benefit all of the citizens in the state, possibly to include  
3           auctioning a portion of the available capacity of a common asset and allocating  
4           to each citizen ownership of an equal portion of that capacity.

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