Introduced by Representatives Pearson of Burlington, Cheney of Norwich,
Deen of Westminster, Edwards of Brattleboro, Klein of
East Montpelier, Masland of Thetford, Partridge of Windham,
Ram of Burlington, Sharpe of Bristol, Weston of Burlington
and Wizowaty of Burlington

Referred to Committee on

Date:

Subject: Conservation; natural resources; Vermont common assets trust

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

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

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

CHAPTER 167. VERMONT COMMON ASSETS TRUST

§ 7601. LEGISLATIVE FINDINGS

The general assembly finds:

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

(2) As applied through English common law and incorporated into the common law of the United States and of the state of Vermont, the public trust doctrine provides that navigable waters and the lands submerged by them in a state are held by the state in trust for the benefit of all the people, and establishes the right of the public to enjoy fully public trust lands and waters for a wide variety of recognized public uses. The doctrine is not fixed or static and is to be extended to meet changing conditions and needs of the public it was created to benefit.
(3) The Declaration of Independence built in part upon the public trust doctrine when it declared: “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.”

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

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

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

(7) As society moves forward, the list of assets that should belong to the people in common because the assets were inherited or created together, and therefore should be preserved in the common interest has expanded now logically to include natural assets such as undisturbed habitats, entire
ecosystems, biological diversity, waste absorption capacity, nutrient cycling, 
flood control, pollination, raw materials, fresh water replenishment systems, 
soil formation systems, and the global atmosphere; and also to include social 
assets such as the Internet, our legal and political systems, universities, 
libraries, accounting procedures, science and technology, transportation 
infrastructure, the radio spectrum, and city parks. In enacting the regional 
greenhouse gas initiative (RGGI), located at 30 V.S.A. § 255, which requires 
the development of a carbon cap and trade program, the state of Vermont 
already has determined that the ability to discharge carbon into the atmosphere 
is an ability that belongs to people in common, and that needs to be managed 
in the common interest.

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

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

(10) It is appropriate that the concept of the public trust be explicitly 
expanded, so that a legal institution is created whose managers, the trustees,
have clear legal responsibilities to protect the common resources, to assure that
the capital assets are not depleted, and to manage any assets that may arise
from the common resources on behalf of the beneficiaries in a manner that
includes strict fiduciary responsibilities, transparency, and accountability. The
creation of such an institution is particularly important in regard to those
beneficiaries who, as members of future generations or ecosystems or
nonhuman species, are unable at present to represent their own substantial
interests.

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

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

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

§ 7602. VERMONT COMMON ASSETS TRUST CORPORATION

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

(b) The board of trustees of the Vermont common assets trust corporation shall consist of four members appointed by the governor, one appointed by the speaker of the house, and one appointed by the president pro tempore of the senate. Two of the members appointed by the governor shall be heads of agencies of state government, one of whom shall be the commissioner of taxes. The other two members appointed by the governor, the member appointed by the speaker of the house, and the member appointed by the president pro tempore of the senate shall be appointed from the public and shall not hold any other state or federal office, position, or employment, either elective or appointed, except as a member of the armed forces of either the United States or of this state.
(c) The four public members of the board shall have recognized competence and wide experience in finance, investments, or other business management-related fields. All members shall be free of substantial conflicts of interest and shall submit the ethics questionnaire established by executive order no. 3-45.

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

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

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

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

(h) A vacancy on the board shall not impair the authority of a quorum of the board to exercise all the powers and perform all the duties of the board.
(i) Public members of the board shall receive an honorarium of $400.00 for each day spent at a meeting of the board or at a meeting of a subcommittee of the board or at a public meeting as a representative of the board. Members of the board are entitled to per diem and travel allowances as provided by 32 V.S.A. § 1010 for members of state boards and commissions.

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

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

(l) By September 30 of each year, the board shall publish a report of the fund for distribution to the governor and the public. The board shall notify the general assembly that the report is available. The report shall be written in easily understandable language. The report shall include financial statements audited by independent outside auditors, a statement of the amount of money received by the fund from each investment during the period covered, a statement of investments of the fund, including an appraisal at market value, a description of fund investment activity during the period covered by the report,
and any other information the board believes would be of interest to the
governor, the general assembly, and the public. The annual income statement
and balance sheet of the fund shall be published in at least one newspaper in
each judicial district. The income statement and balance sheet for the two
fiscal years preceding shall be included in that publication.

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

§ 7603. VERMONT COMMON ASSETS TRUST FUND

(a) There is hereby created in the state treasury a fund to be known as the
Vermont common assets trust fund, to be expended by the board of trustees of
the common assets trust fund. The fund shall consist of appropriations of the
general assembly and other sources of revenue established by law. All
balances in the fund at the end of any fiscal year shall be carried forward and
remain a part of the fund. Interest earned by the fund shall be deposited into
the fund. Disbursements from the fund shall be made by the state treasurer on
warrants drawn by the commissioner of finance and management.
(b) The board of trustees may authorize disbursements from the fund for:
   (1) enhancing the common assets;
   (2) activities that provide direct benefits to all citizens of the state,
which may include measures relating to health care, Social Security
enhancements, startup grants for young people upon reaching the age of 18
years, and public libraries and education. However, a minimum of 25 percent
of disbursements of the fund shall be reserved for and paid out as pro rata
dividends for each citizen of the state;
   (3) other purposes authorized by law; and
   (4) otherwise as the board determines to be in the interests of the
beneficiaries.
§ 7604. VERMONT COMMON ASSETS TRUST ADVISORY
COMMITTEE
(a) There is created a Vermont common assets trust advisory committee.
The committee shall consist of two members of the senate and one
representative of the general public appointed by the committee on
committees, two members of the house and one representative of the general
public appointed by the speaker of the house, and three persons appointed by
the governor.

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

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

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

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

(1) Carry on a continuing review of the status of the common assets in
the state of Vermont.
(2) Consider:

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

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

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

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

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

(4) Recommend ways that income from the trust fund may best be allocated to benefit all of the citizens in the state, possibly to include auctioning a portion of the available capacity of a common asset or allocating to each citizen ownership of an equal portion of that capacity, or both.
(5) Develop appropriate recommendations, including draft legislation, and at least annually report to the general assembly with the results of its deliberations.

Sec. 2. EFFECTIVE DATE

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