

1 H.324

2 Introduced by Representative Deen of Westminster

3 Referred to Committee on

4 Date:

5 Subject: Conservation and development; water resources; wetlands

6 Statement of purpose: This bill proposes to authorize the secretary of natural
7 resources to make administrative determinations to classify certain wetlands;
8 provide for an appeal of these determinations; authorize the secretary to revise
9 the Vermont significant wetlands inventory maps; amend the wetland value
10 relating to hydrophytic vegetation habitat; and provide that violations of
11 wetland regulations do not constitute an encumbrance on marketable title.

12 An act relating to wetlands protection

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

14 Sec. 1. FINDINGS

15 The general assembly finds that:

16 (1) It is the policy of the state to preserve, protect, and conserve
17 significant wetlands and their functions and values; to prevent the degradation
18 and destruction of wetlands; to protect and enhance the quality, character, and
19 usefulness of surface waters; and to regulate the use and development of such
20 wetlands in a manner consistent with beneficial and environmentally sound

1 development, private property interests, and the economic, agricultural, and
2 silvicultural needs of the state.

3 (2) The federal government regulates wetlands that are “waters of the
4 United States” under Section 404 of the federal Clean Water Act, and the
5 Vermont wetlands program provides protection for “significant” wetlands and
6 their buffer zones.

7 (3) The Vermont significant wetlands inventory maps provide
8 information concerning those wetlands in Vermont which have been
9 determined to be significant and which therefore merit protection.

10 (4) The Vermont significant wetlands inventory maps have been
11 minimally updated since their creation in 1990, but are currently inaccurate in
12 some respects. Therefore, the agency of natural resources has proposed a
13 comprehensive update.

14 (5) Currently, only the water resources panel of the natural resources
15 board has the authority to reclassify wetlands as significant or not, and such
16 reclassification requires rulemaking pursuant to chapter 25 of Title 3. There is
17 a need for a more efficient and less costly method of wetlands reclassification.

1 Sec. 2. 10 V.S.A. chapter 37 is amended to read:

2 CHAPTER 37. WETLANDS PROTECTION AND
3 WATER RESOURCES MANAGEMENT

4 Sec. 3. 10 V.S.A. § 902 is amended to read:

5 § 902. DEFINITIONS

6 Wherever used or referred to in this chapter, unless a different meaning
7 clearly appears from the context:

8 * * *

9 (6) “Class I wetland” means:

10 (A) a wetland identified on the Vermont significant wetlands
11 inventory maps as a Class I wetland;

12 (B) a wetland which the former water resources board determined to
13 be a Class I wetland; or

14 (C) a wetland that the panel, based upon an evaluation of the extent
15 to which the wetland serves the functions and values set forth in subdivisions
16 6025(5)(A)–(K) of this title, determines is exceptional or irreplaceable in its
17 contribution to Vermont’s natural heritage and, therefore, merits the highest
18 level of protection.

19 (7) “Class II wetland” means a wetland other than a Class I or Class III
20 wetland that:

1 (A) is a wetland identified on the Vermont significant wetlands
2 inventory maps; or

3 (B) the secretary determines to merit protection, pursuant to section
4 914 of this title, based upon an evaluation of the extent to which it serves the
5 functions and values set forth in subdivisions 6025(5)(A)–(K) of this title and
6 the rules of the panel.

7 (8) “Class III wetland” means a wetland that is neither a Class I wetland
8 nor a Class II wetland.

9 (9) “Buffer zone” means an area contiguous to a significant wetland that
10 protects the wetland’s functions and values. The buffer zone for a Class I
11 wetland shall extend at least 100 feet from the border of the wetland, unless the
12 panel determines otherwise under section 915 of this title. The buffer zone for
13 a Class II wetland shall extend at least 50 feet from the border of the wetland
14 unless the secretary determines otherwise under section 914 of this title.

15 (10) “Panel” means the water resources panel of the natural resources
16 board.

17 (11) “Significant wetland” means any Class I or Class II wetland.

18 (12) “Secretary” means the secretary of natural resources or the
19 secretary’s authorized representative.

1 Sec. 4. 10 V.S.A. § 905b(18) is amended to read:

2 (18) study and investigate the wetlands of the state and cooperate with
3 municipalities, the general public, other agencies, and the board in collecting
4 and compiling data relating to wetlands, propose to the board specific wetlands
5 to be designated as ~~significant~~ Class I wetlands, and issue or deny permits
6 pursuant to section 6025 of this title and the rules of the panel, issue wetland
7 determinations pursuant to section 914 of this title, issue orders pursuant to
8 section 1272 of this title, and implement ~~through existing programs~~ the rules
9 adopted by the board governing significant wetlands, ~~including the issuance or~~
10 denial conditional use determinations pursuant to section 1272 of this title.

11 Sec. 5. 10 V.S.A. chapter 37, subchapter 4 is added to read:

12 Subchapter 4. Wetlands Determinations and Protection

13 § 913. PROHIBITION

14 (a) Except for allowed uses adopted by the panel by rule, no person shall
15 conduct or allow to be conducted an activity in a significant wetland or buffer
16 zone of a significant wetland except in compliance with a permit, conditional
17 use determination, or order issued by the secretary.

18 (b) No permit shall be required under this section for any activity that
19 occurred before the effective date of this section within an area that was not:

20 (1) identified as a wetland on the Vermont significant wetlands
21 inventory maps.

1 (2) in a wetland that was contiguous to an area identified as a wetland
2 on the Vermont significant wetlands inventory maps.

3 (3) within the buffer zone of a wetland referred to in subdivision (1) or
4 (2) of this subsection.

5 § 914. WETLAND DETERMINATIONS

6 (a) The secretary may, upon a petition or on his or her own motion,
7 determine whether any wetland is a Class II or Class III wetland. Such
8 determinations shall be based on an evaluation of the functions and values set
9 forth in subdivisions 6025(d)(5)(A)–(K) of this title and the rules of the panel.

10 (b) The secretary may establish the necessary width of the buffer zone of
11 any Class II wetland as part of any wetland determination pursuant to the rules
12 of the panel.

13 (c) The secretary shall provide written notice of a proposed determination
14 to the owner of each parcel of land within or adjacent to the wetland or buffer
15 zone in question; publish notice on the agency website; and provide an
16 electronic notice to persons who have requested to be on a list of interested
17 persons. Such notice shall provide no fewer than 30 days within which to file
18 written comments or to request that the secretary hold a public meeting on the
19 proposed determination.

1 (d) The secretary shall provide, in person, by mail, or by electronic notice, a
2 written copy of a wetland determination issued under this section to the owner
3 of each affected parcel of land and to the requesting petitioner.

4 (e) The secretary may recommend to the panel that a wetland be classified
5 as a Class I wetland under section 915 of this title.

6 § 915. CLASS I WETLANDS

7 The classification of any wetland as a Class I wetland, the reclassification of
8 a Class I wetland as a Class II or III wetland, the reclassification of any Class
9 II or III wetland as a Class I wetland, or the modification of the buffer zone of
10 a Class I wetland, shall be made by the panel pursuant to the rulemaking
11 provisions of chapter 25 of Title 3.

12 § 916. REVISION OF VERMONT SIGNIFICANT WETLANDS

13 INVENTORY MAPS

14 The secretary shall revise the Vermont significant wetlands inventory maps
15 to reflect wetland determinations issued under section 914 of this title and
16 rulemaking by the panel under section 915 of this title.

17 § 917. APPEALS

18 Any act or decision of the secretary under this subchapter may be appealed
19 in accordance with chapter 220 of this title.

1 Sec. 6. RECODIFICATION

2 10 V.S.A. chapter 37 §§ 921–924 are recodified within subchapter 5, which is
3 added to read:

4 Subchapter 5. Aquatic Nuisance Control

5 Sec. 7. 10 V.S.A. § 6025(d) is amended to read:

6 (d) The water resources panel may adopt rules, in accordance with the
7 provisions of chapter 25 of Title 3, in the following areas:

8 * * *

9 (5) Rules regarding the identification of wetlands that are so significant
10 that they merit protection. Any determination that a particular wetland is
11 significant will result from an evaluation of at least the following functions and
12 values which a wetland serves:

13 * * *

14 (G) ~~provides for hydrophytic vegetation habitat~~ contributes to an
15 exemplary wetland natural community, in accordance with the rules of the
16 panel;

17 * * *

18 (7) Rules protecting wetlands that have been determined under
19 subdivision (5) or (6) of this subsection to be significant, including rules that
20 provide for the issuance or denial of ~~conditional use determinations~~ permits
21 and the issuance of wetland determinations under chapter 37 of this title by the

1 department of environmental conservation; provided, however, that the rules
2 may only protect the values and functions sought to be preserved by the
3 designation. The panel shall not adopt rules that restrain agricultural activities
4 without the consent of the secretary of the agency of agriculture, food and
5 markets and shall not adopt rules that restrain silvicultural activities without
6 the consent of the commissioner of the department of forests, parks and
7 recreation.

8 Sec. 8. 27 V.S.A. § 615 is added to read:

9 § 615. WETLAND PERMIT

10 No encumbrance on record title to real estate or effect on marketability shall
11 be created by failure to obtain or comply with a permit of the secretary of
12 natural resources pursuant to chapter 37 of Title 10.

13 Sec. 9. EFFECTIVE DATE

14 This act shall take effect at such time as the water resources panel has
15 issued both a rule updating the Vermont significant wetlands inventory maps
16 and a rule updating the Vermont wetland rules.

17 Sec. 10. TRANSITION PROVISION

18 Any wetland proposed by the secretary in a rulemaking petition to be
19 designated as a Class I or Class II wetland, shall be presumed to be a
20 significant wetland, until the secretary or panel determines otherwise.