

H.447

An act relating to wetlands protection

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

Sec. 1. FINDINGS

The general assembly finds that:

(1) It is the policy of the state to preserve, protect, and conserve significant wetlands and their functions and values; to prevent the degradation and destruction of wetlands; to protect and enhance the quality, character, and usefulness of surface waters; and to regulate the use and development of such wetlands in a manner consistent with beneficial and environmentally sound development, private property interests, and the economic, agricultural, and silvicultural needs of the state.

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

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

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

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

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

CHAPTER 37. WETLANDS PROTECTION AND  
WATER RESOURCES MANAGEMENT

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

§ 902. DEFINITIONS

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

\* \* \*

(6) "Class I wetland" means:

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

(B) a wetland which the former water resources board identified in rules of the board as a Class I wetland; or

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

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

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

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

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

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

(10) "Panel" means the water resources panel of the natural resources board.

(11) "Significant wetland" means any Class I or Class II wetland.

(12) "Secretary" means the secretary of natural resources or the secretary's authorized representative.

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

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

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

Subchapter 4. Wetlands Determinations and Protection

§ 913. PROHIBITION

(a) Except for allowed uses adopted by the panel by rule, no person shall conduct or allow to be conducted an activity in a significant wetland or buffer

zone of a significant wetland except in compliance with a permit, conditional use determination, or order issued by the secretary.

(b) A permit shall not be required under this section for:

(1) any activity that occurred before the effective date of this section unless the activity occurred within:

(A) an area identified as a wetland on the Vermont significant wetlands inventory maps.

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

(C) the buffer zone of a wetland referred to in subdivision (A) or (B) of this subdivision (1).

(2) any construction within a wetland that is identified on the Vermont significant wetlands inventory maps or within the buffer zone of such a wetland, provided that the construction was completed prior to February 23, 1992, and no action for which a permit is required under the rules of the panel was taken or caused to be taken on or after February 23, 1992.

#### § 914. WETLAND DETERMINATIONS

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

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

(c) The secretary shall provide by certified mail written notice of a proposed determination to the owner of each parcel of land within or adjacent to the wetland or buffer zone in question; publish notice on the agency website; and provide an electronic notice to persons who have requested to be on a list of interested persons. Such notice shall include the date of the secretary's proposed determination and shall provide no fewer than 30 days from the date of the secretary's proposed determination within which to file written comments or to request that the secretary hold a public meeting on the proposed determination.

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

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

#### § 915. CLASS I WETLANDS

The classification of any wetland as a Class I wetland, the reclassification of a Class I wetland as a Class II or III wetland, the reclassification of any Class II or III wetland as a Class I wetland, or the modification of the buffer zone of

a Class I wetland shall be made by the panel pursuant to the rulemaking provisions of chapter 25 of Title 3.

§ 916. REVISION OF VERMONT SIGNIFICANT WETLANDS

INVENTORY MAPS

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

§ 917. APPEALS

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

Sec. 6. RECODIFICATION

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

Subchapter 5. Aquatic Nuisance Control

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

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

\* \* \*

(5) Rules regarding the identification of wetlands that are so significant that they merit protection. Any determination that a particular wetland is

significant will result from an evaluation of at least the following functions and values which a wetland serves:

\* \* \*

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

\* \* \*

(7) Rules protecting wetlands that have been determined under subdivision (5) or (6) of this subsection to be significant, including rules that provide for the issuance or denial of ~~conditional use determinations~~ permits and the issuance of wetland determinations under chapter 37 of this title by the department of environmental conservation; provided, however, that the rules may only protect the values and functions sought to be preserved by the designation. The panel shall not adopt rules that restrain agricultural activities without the consent of the secretary of the agency of agriculture, food and markets and shall not adopt rules that restrain silvicultural activities without the consent of the commissioner of the department of forests, parks and recreation.

Sec. 8. 10 V.S.A. § 8003(a) is amended to read:

(a) The secretary may take action under this chapter to enforce the following statutes:

- (1) [Deleted.]
- (2) 10 V.S.A. chapter 23, relating to air quality;
- (3) 10 V.S.A. chapters ~~37, 47,~~ and 56, relating to water pollution control, water quality standards, ~~water resources management,~~ and public water supply;
- (4) 10 V.S.A. chapters 41 and 43, relating to dams and stream alterations;
- (5) 10 V.S.A. chapter 37, relating to wetlands protection, water resources management, and the introduction of algicides, pesticides, and herbicides;

\* \* \*

Sec. 9. 10 V.S.A. § 8503(a) is amended to read:

(a) This chapter shall govern all appeals of an act or decision of the secretary, excluding enforcement actions under chapters 201 and 211 of this title and rulemaking, under the following authorities and under the rules adopted under those authorities:

- (1) The following provisions of this title:
  - (A) chapter 23 (air pollution control).
  - (B) ~~section 922 (aquatic nuisance control grants in aid)~~ chapter 37 (wetlands protection, water resources management, and aquatic nuisance control grants in aid).

\* \* \*

Sec. 10. 27 V.S.A. § 615 is added to read:

§ 615. WETLAND PERMIT

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

Sec. 11. TRANSITION PROVISION

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

Sec. 12. AGENCY OF NATURAL RESOURCES REPORT ON  
WETLANDS PERMITTING

(a) On or before January 15, 2010, and annually thereafter, the agency of natural resources shall submit to the house committee on fish, wildlife and water resources and the senate committee on natural resources and energy a report regarding implementation of the wetlands permitting requirements of 10 V.S.A. chapter 37. The report shall include:

(1) A summary of implementation by the agency of natural resources of the requirements of 10 V.S.A. chapter 37.

(2) A copy of and summary of any amendments to the wetlands rules of the water resources panel of the natural resources board.

(3) The number of enforcement actions initiated by the agency of natural resources under 10 V.S.A. chapter 37.

(4) A summary of the enforcement actions brought under 10 V.S.A. chapter 37, including the monetary penalties and other administrative relief sought for each alleged violation.

(5) A summary of any legal, administrative, or technical issues arising from implementation and enforcement of the requirements of 10 V.S.A. chapter 37.

(6) A summary of the total number of staff positions necessary to carry out the wetland permitting and determination requirements of this act.

(b) If the agency of natural resources identifies any legal, administrative, or technical issues arising from the implementation and enforcement of the requirements of 10 V.S.A. chapter 37, the agency may recommend that the natural resources board reconvene the wetlands investigation group or a subcommittee of the wetlands investigation group in order to develop legislative or regulatory recommendations to address such issues.

(c) This section shall be repealed January 16, 2012.

Sec. 13. No. 183 of 1931 is amended to read:

~~Section 1. Change of name. The pond situated in the town of Bristol, commonly called Bristol Pond, is hereby named and designated as Winona Lake.~~

Sec. 14. EFFECTIVE DATE

(a) This section and Secs. 1 (findings), 12 (ANR wetlands report), and 13 (Bristol Pond) of this act shall take effect July 1, 2009.

(b) Secs. 2 (retitling 10 V.S.A. chapter 37), 3 (wetlands definitions), 4 (ANR wetlands authority), 5 (wetlands permitting), 6 (recodification of aquatic nuisance control authority), 7 (water resources panel rulemaking authority), 8 (ANR enforcement authority), 9 (appeals), 10 (marketability of title), and 11 (transition) of this act shall take effect 45 days after such time as the water resources panel has issued both a rule updating the Vermont significant wetlands inventory maps and a rule updating the Vermont wetland rules.