

H.763

An act relating to establishment of an agency of natural resources' river corridor management program

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

Sec. 1. FINDINGS

The general assembly finds that:

- (1) The surface waters of Vermont are an invaluable resource to the state and its citizens.
- (2) The shorelands and floodplains adjacent to the waters of the state harbor some of the most valuable natural resources in the state and serve important functions related to the health and quality of the state's surface waters and to public safety.
- (3) The shorelands adjacent to the state's surface waters are often fragile natural resources, and their protection is necessary to maintain the vitality and health of the state's surface waters.
- (4) Under current law, the potential exists for uncoordinated, unplanned, and piecemeal development along the state's surface waters, which could result in significant negative impacts on the waters of Vermont and upon public welfare and safety.
- (5) Buffers consisting of trees and other vegetation adjacent to the lakes of the states and protected river corridors consisting of vegetated buffers and

undeveloped lands along rivers and streams help sustain the social, economic, and ecological sustainability of Vermont communities.

Sec. 2. 10 V.S.A. § 1421 is amended to read:

§ 1421. POLICY

To aid in the fulfillment of the state's role as trustee of its navigable waters and to promote public health, safety, convenience, and general welfare, it is declared to be in the public interest to make studies, establish policies, make plans, make rules, encourage and promote buffers adjacent to lakes, ponds, reservoirs, rivers, and streams of the state, encourage and promote protected river corridors adjacent to rivers and streams of the state, and authorize municipal shoreland and river corridor protection zoning bylaws for the efficient use, conservation, development, and protection of the state's water resources. The purposes of the rules shall be to further the maintenance of safe and healthful conditions; prevent and control water pollution; protect spawning grounds, fish, and aquatic life; control building sites, placement of structures, and land uses; reduce property loss and damage; preserve shore cover, ~~and~~ natural beauty, and natural stability; and provide for multiple use of the waters in a manner to provide for the best interests of the citizens of the state.

Sec. 3. 10 V.S.A. § 1422 is amended to read:

§ 1422. DEFINITIONS

In this chapter, unless the context clearly requires otherwise:

- (1) "Agency" means the agency of natural resources.
- (2) "Board" means the water resources panel of the natural resources board.
- (3) "Department" means department of environmental conservation.
- (4) "Navigable water" or "navigable waters" means Lake Champlain, Lake Memphremagog, the Connecticut River, all natural inland lakes within Vermont and all streams, ponds, flowages, and other waters within the territorial limits of Vermont, including the Vermont portion of boundary waters, which are boatable under the laws of this state.
- (5) "Public shorelands" means state-owned lands adjacent to navigable waters.
- (6) "Public waters" means navigable waters excepting those waters in private ponds and private preserves as set forth in sections 5204, 5205, 5206, and 5210 of this title.
- (7) "Secretary" means the secretary of natural resources or the secretary's duly authorized representative.
- (8) "Shorelands" means the lands being between the normal mean water ~~mark~~ level of a lake, pond, or impoundment exceeding ~~twenty~~ 20 acres and a line not less than ~~five hundred~~ 500 feet nor more than ~~one thousand~~ 1,000 feet from such mean water ~~mark~~ level.

(9) “Outstanding resource waters” mean waters of the state designated by the board as having exceptional natural, recreational, cultural, or scenic values.

(10) “Buffer” means an undisturbed area consisting of trees, shrubs, ground cover plants, duff layer, and generally uneven ground surface that extends a specified distance horizontally across the surface of the land from the mean water level of an adjacent lake or from the top of the bank of an adjacent river or stream, as determined by the secretary of natural resources.

(11) “Lake” means a body of standing water, including a pond or a reservoir, which may have natural or artificial water level control. Private ponds as defined under section 5210 of this title, and reservoirs specifically constructed for the following purposes shall not be considered lakes: snowmaking storage, golf course irrigation, stormwater management, and fire suppression.

(12) “River corridor” means the land area adjacent to a river that is required to accommodate the dimensions, slope, planform, and buffer of the naturally stable channel, and necessary to maintain or restore fluvial equilibrium conditions and minimize fluvial erosion hazards, as delineated by the agency of natural resources in accordance with river corridor protection procedures.

(13) "River" means the full length and width, including the bed and banks, of any watercourse, including rivers, streams, creeks, brooks, and branches, which experience perennial flow. "River" does not mean constructed drainageways, including water bars, swales, and roadside ditches.

Sec. 4. 10 V.S.A. § 1425 is amended to read:

§ 1425. SHORELAND PROTECTION BYLAWS

(a) ~~To assist~~ The secretary of natural resources shall establish a shoreland management program to aid and support municipalities in ~~complying~~ adopting municipal shoreland bylaws that comply with section 4411 of Title 24, ~~the~~. The secretary shall prepare and provide general recommended standards and criteria for shoreland bylaws utilizing the criteria set forth in section 1423 of this title. On or before February 2011, the secretary shall develop best management practices for the management of shorelands, including buffers within shorelands, and other management techniques designed to protect the quality of public waters. The secretary shall assist the regional planning commissions in preparing appropriate sample bylaws which conform to the intent of this section.

(b) The secretary, the municipalities and all state agencies shall mutually cooperate to accomplish the objectives of this section. To that end, the secretary shall consult with the governing bodies of municipalities and shall extend all possible assistance. The secretary shall provide appropriate sample

bylaws by September 1, 1974. By September 1, 1974 the secretary shall also contact every municipality with shorelands:

- (1) commenting on their existing shoreland bylaws; and
- (2) providing them with a detailed and specific program as to the steps

necessary to adopt shoreland bylaws. In contacting municipalities the secretary shall send copies of his correspondence by certified mail to the selectmen, town clerk, and planning commission. Copies of this correspondence should also be sent to the regional planning commission for that municipality, the state planning office and the agency of commerce and community development.

(c) On or before January 15, 1975 and again on or before January 15, 1976 the secretary shall make a complete and definitive report to the general assembly on the status of shoreland zoning in Vermont. This report shall contain a municipality by municipality analysis of which municipalities have received appropriate sample bylaws and what actions, if any, have been taken thereon by the municipalities.

(d) This section and section 4411 of Title 24 shall be construed together to accomplish the purposes and objectives of this section.

(e) Beginning February 1, 2011, the secretary of administration, after consultation with the state agencies of relevant jurisdiction, shall offer financial incentives to municipalities through existing grants and pass-through

funding programs which encourage municipal adoption and implementation of zoning bylaws that protect shorelands and buffers.

Sec. 5. 10 V.S.A. § 1427 is added to read:

§ 1427. RIVER CORRIDORS AND BUFFERS

(a) The secretary of natural resources shall establish a river corridor management program to aid and support the municipal adoption of river corridor and buffer bylaws. Under the river corridor management program, the secretary shall:

(1) upon request, provide municipalities with maps of designated river corridors within the municipality. A river corridor map provided to a municipality shall delineate a recommended buffer that is based on site-specific conditions. The secretary shall provide maps under this subdivision based on a priority schedule established by the secretary in procedure; and

(2) develop recommended best management practices for the management of river corridors and buffers.

(b) No later than February 1, 2011, the secretary of administration, after consultation with the state agencies of relevant jurisdiction, shall offer financial incentives to municipalities through existing grants and pass-through funding programs which encourage municipal adoption and implementation of zoning bylaws that protect river corridors and buffers.

(c) No later than February 1, 2011, the agency of natural resources shall define minimum standards for municipal eligibility for any financial incentives established under subsection (b) of this section.

Sec. 6. 24 V.S.A. § 4411 is amended to read:

§ 4411. ZONING BYLAWS

(a) A municipality may regulate land development in conformance with its adopted municipal plan and for the purposes set forth in section 4302 of this title to govern the use of land and the placement, spacing, and size of structures and other factors specified in the bylaws related to public health, safety, or welfare. Zoning bylaws may permit, prohibit, restrict, regulate, and determine land development, including the following:

- (1) Specific uses of land and shoreland facilities;
- (2) Dimensions, location, erection, construction, repair, maintenance, alteration, razing, removal, and use of structures;
- (3) Areas and dimensions of land to be occupied by uses and structures, as well as areas, courts, yards, and other open spaces and distances to be left unoccupied by uses and structures;
- (4) Timing or sequence of growth, density of population, and intensity of use;
- (5) Uses within a river corridor and buffer, as those terms are defined in 10 V.S.A. §§ 1422 and 1427.

(b) All zoning bylaws shall apply to all lands within the municipality other than as specifically limited or exempted in accordance with specific standards included within those bylaws and in accordance with the provisions of this chapter. The provisions of those bylaws may be classified so that different provisions may be applied to different classes of situations, uses, and structures and to different and separate districts of the municipality as may be described by a zoning map made part of the bylaws. The land use map required pursuant to subdivision 4382(a)(2) of this title of any municipality may be designated as the zoning map except in cases in which districts are not deemed by the planning commission to be described in sufficient accuracy or detail by the municipal plan land use map. All provisions shall be uniform for each class of use or structure within each district, except that additional classifications may be made within any district for any or all of the following:

(1) To make transitional provisions at and near the boundaries of districts.

(2) To regulate the expansion, reduction, or elimination of certain nonconforming uses, structures, lots, or parcels.

(3) To regulate, restrict, or prohibit uses or structures at or near any of the following:

(A) Major thoroughfares, their intersections and interchanges, and transportation arteries.

(B) Natural or artificial bodies of water.

(C) Places of relatively steep slope or grade.

(D) Public buildings and public grounds.

(E) Aircraft and helicopter facilities.

(F) Places having unique patriotic, ecological, historical, archaeological, or community interest or value, or located within scenic or design control districts.

(G) Flood, fluvial erosion, or other hazard areas and other places having a special character or use affecting or affected by their surroundings.

(H) River corridors and buffers, as those terms are defined in 10 V.S.A. §§ 1422 and 1427.

(4) To regulate, restrict, or prohibit uses or structures in overlay districts, as set forth in subdivision 4414(2) of this title.

Sec. 7. 24 V.S.A. § 4414 is amended to read:

§ 4414. ZONING; PERMISSIBLE TYPES OF REGULATION

Any of the following types of regulations may be adopted by a municipality in its bylaws in conformance with the plan and for the purposes established in section 4302 of this title.

(1) Zoning districts. A municipality may define different and separate zoning districts, and identify within these districts which land uses are

permitted as of right, and which are conditional uses requiring review and approval, including the districts set forth in this subdivision (1).

(A) Downtown, village center, new town center, and growth center districts. The definition or purpose stated for local downtown, village center, new town center, or growth center zoning districts should conform with the applicable definitions in section 2791 of this title. Municipalities may adopt downtown, village center, new town center, or growth center districts without seeking state designation under chapter 76A of this title. A municipality may adopt a manual of graphic or written design guidelines to assist applicants in the preparation of development applications. The following objectives should guide the establishment of boundaries, requirements, and review standards for these districts:

\* \* \*

(D) Shorelands.

(i) A municipality may adopt bylaws to regulate shorelands as defined in section 1422 of Title 10 to prevent and control water pollution; preserve and protect wetlands and other terrestrial and aquatic wildlife habitat; conserve the scenic beauty of shorelands; minimize shoreline erosion; reserve public access to public waters; and achieve other municipal, regional, or state shoreland conservation and development objectives.

(ii) Shoreland bylaws may regulate the design and maintenance of sanitary facilities; regulate filling of and other adverse alterations to wetlands and other wildlife habitat areas; control building location; require the provision and maintenance of vegetation; require provisions for access to public waters for all residents and owners of the development; and impose other requirements authorized by this chapter.

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(G) River corridors and buffers. In accordance with section 4424 of this title, a municipality may adopt bylaws to protect river corridors and buffers, as those terms are defined in 10 V.S.A. §§ 1422 and 1427, in order to protect public safety; prevent and control water pollution; prevent and control stormwater runoff; preserve and protect wetlands and waterways; maintain and protect natural channel, streambank, and floodplain stability; minimize fluvial erosion and damage to property and transportation infrastructure; preserve and protect the habitat of terrestrial and aquatic wildlife; promote open space and aesthetics; and achieve other municipal, regional, or state conservation and development objectives for river corridors and buffers. River corridor and buffer bylaws may regulate the design and location of development; control the location of buildings; require the provision and maintenance or reestablishment of vegetation, including no net loss of vegetation; require screening of

development or use from waters; reserve existing public access to public waters and impose other requirements authorized by this chapter.

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Sec. 8. AGENCY OF NATURAL RESOURCES REPORT

Beginning January 15, 2011 and biennially thereafter, the agency of natural resources shall report to the house committee on fish, wildlife and water resources and the senate committee on natural resources and energy regarding the status of river corridor, shoreland, and buffer zoning within Vermont. The report shall include:

(1) The priority schedule for providing river corridor and buffer maps required by 10 V.S.A. § 1427 and a summary of the implementation of the priority schedule;

(2) A summary of the status of best management practices required under 10 V.S.A. §§ 1425 and 1427 for management of river corridors, shorelands, and buffers;

(3) A summary of the municipalities that have adopted river corridor, shoreland, or buffer zoning bylaws and a summary of the content of such bylaws;

(4) A description of the financial incentives that have been established according to the requirements of 10 V.S.A. §§ 1425 and 1427 for municipal

adoption and implementation of zoning bylaws that protect and preserve river corridors, shorelands, and buffers; and

(5) The agency of natural resources' recommendations for statutory changes, regulatory changes, or additional practices that, based on information available to the agency of natural resources, will improve the efficacy of the river corridor management and shoreland management programs and improve the quality of the waters of the state.

Sec. 9. EFFECTIVE DATES

This act shall take effect July 1, 2010, except that 10 V.S.A. § 1427(a) shall take effect February 1, 2011.