

1 H.423

2 Introduced by Representative Atkins of Winooski

3 Referred to Committee on

4 Date:

5 Subject: Conservation; water resources; wetlands

6 Statement of purpose: This bill proposes to amend the regulation of wetlands
7 in the state by requiring a permit to conduct activities in naturally-occurring
8 wetlands, but allowing activities in manmade wetlands unless otherwise
9 prohibited by rule. The bill would also authorize the water resources panel of
10 the natural resources board to adopt rules regarding both naturally-occurring
11 wetlands and manmade wetlands.

12 An act relating to wetlands management

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

14 Sec. 1. 10 V.S.A. § 902 is amended to read:

15 § 902. DEFINITIONS

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

18 (1) "Board" means the water resources panel of the natural resources
19 board;

20 (2) "Department" means department of environmental conservation;

1 (3) “Waters” means any and all rivers, streams, brooks, creeks, lakes,
2 ponds or stored water, and groundwaters, excluding municipal and farm water
3 supplies;

4 (4) “Water resources” means the waters and the values inherent or
5 potential in waters and their uses.

6 (5) ~~“Wetlands”~~ “Naturally-occurring wetlands” means those areas of the
7 state that are inundated by surface or groundwater with a frequency sufficient
8 to support significant vegetation or aquatic life that depend on saturated or
9 seasonally saturated soil conditions for growth and reproduction. Such areas
10 include but are not limited to naturally-occurring marshes, swamps, sloughs,
11 potholes, fens, river and lake overflows, mud flats, bogs and ponds, but
12 excluding manmade wetlands and such areas as grow food or crops in
13 connection with farming activities.

14 (6) ~~“Class I wetland” means:~~

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

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

19 ~~(C) a wetland that the panel, based upon an evaluation of the extent~~
20 ~~to which the wetland serves the functions and values set forth in subdivisions~~
21 ~~6025(5)(A)-(K) of this title, determines is exceptional or irreplaceable in its~~

1 ~~contribution to Vermont's natural heritage and, therefore, merits the highest~~
2 ~~level of protection.~~

3 (7) ~~"Class II wetland" means a wetland other than a Class I or Class III~~
4 ~~wetland that:~~

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

7 (B) ~~the secretary determines to merit protection, pursuant to section~~
8 ~~914 of this title, based upon an evaluation of the extent to which it serves the~~
9 ~~functions and values set forth in subdivisions 6025(5)(A) (K) of this title and~~
10 ~~the rules of the panel.~~

11 (8) ~~"Class III wetland" means a wetland that is neither a Class I wetland~~
12 ~~nor a Class II wetland.~~

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

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

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

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

3 (13) “Manmade wetlands” means wetlands which were created solely as
4 a result of human activity, such as scraping, ditch digging, or contouring of
5 uplands. Such areas include swales and drainage ditches.

6 Sec. 2. 10 V.S.A. § 905b(18) is amended to read:

7 (18) study and investigate the wetlands of the state and cooperate with
8 municipalities, the general public, other agencies, and the board in collecting
9 and compiling data relating to naturally-occurring wetlands and manmade
10 wetlands, propose to the ~~board~~ board-specific naturally-occurring
11 wetlands to be designated as Class I wetlands, issue or deny permits pursuant
12 to section 6025 of this title and the rules of the panel, issue wetland
13 ~~determinations pursuant to section 914~~ permits under section 916a of this title,
14 issue orders pursuant to section 1272 of this title, and implement the rules
15 adopted by the board governing significant wetlands.

16 Sec. 3. REPEAL

17 10 V.S.A. §§ 913–916 (wetlands determination; wetlands permitting) are
18 repealed.

1 Sec. 4. 10 V.S.A. §§ 916a and 916b are added to read:

2 § 916a. NATURALLY-OCCURRING WETLANDS

3 (a) Except for those allowed uses adopted by the panel by rule, no person
4 shall conduct or allow to be conducted an activity in a naturally-occurring
5 wetland without first obtaining a permit from the secretary.

6 (b) The secretary may issue a permit to conduct an activity in a
7 naturally-occurring wetland according to rules adopted by the panel to
8 accomplish the purposes of this subchapter. The rules adopted by the panel
9 under this subsection may authorize the secretary to issue individual permits or
10 general permits under this section for discrete categories of activities
11 conducted in a naturally-occurring wetland. A general permit issued under this
12 section shall have a term of no more than 10 years.

13 (c) Application for an individual permit to conduct activities in a
14 naturally-occurring wetland shall be made on a form prescribed by the
15 secretary. The secretary may issue, condition, modify, revoke, or deny a
16 permit to conduct activities in a naturally-occurring wetland in order to carry
17 out the purposes of this subchapter. An applicant for a permit shall pay a fee in
18 accordance with 3 V.S.A. § 2822. The secretary shall provide notice of each
19 application for a permit to conduct activities in a naturally-occurring wetland
20 pursuant to rules adopted by the panel.

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

11 Sec. 6. EFFECTIVE DATE

12 This act shall take effect on July 1, 2011.