

1 S.202

2 Introduced by Senator Lyons

3 Referred to Committee on

4 Date:

5 Subject: Conservation and development; land use; natural resources; flood

6 hazard areas; flood insurance; state permit; municipal delegation

7 Statement of purpose: This bill proposes to establish state regulation of flood
8 hazard areas at the minimum necessary to ensure compliance with the National
9 Flood Insurance Program for the entire state. The bill also provides that a
10 municipality may opt to seek delegation of this regulatory authority within its
11 borders and that a delegated municipality may adopt more stringent
12 requirements, except as to agricultural and silvicultural practices. The bill
13 further requires that the state issue a general permit to govern statewide
14 regulation of agricultural and silvicultural practices within a flood hazard area,
15 whether that regulation is by the state or a delegated municipality.

16 An act relating to regulation of flood hazard areas

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

18 Sec. 1. 10 V.S.A. chapter 32 is amended to read:

19 CHAPTER 32. FLOOD HAZARD AREAS

1 § 751. PURPOSE

2 The purpose of this chapter is to minimize and prevent the loss of life and
3 property, the disruption of commerce, the impairment of the tax base, and the
4 extraordinary public expenditures and demands on public service that result
5 from flooding; to ensure that the development of the flood hazard areas of this
6 state is accomplished in a manner consistent with the health, safety and welfare
7 of the public; ~~to provide state assistance to local government units in~~
8 ~~management of flood hazard areas;~~ to coordinate federal, state, and local
9 management activities for flood hazard areas; to establish minimum standards
10 for state regulation of flood hazard areas; to encourage local government units
11 to manage flood hazard areas and other flood-prone lands; to provide state
12 assistance to local government units in management of flood-prone lands; to
13 maintain the wise agricultural use of flood-prone lands; to carry out a
14 comprehensive statewide flood hazard area management program for the state
15 in order to ~~make the state and units of local government eligible~~ ensure
16 eligibility for flood insurance under the requirements of the ~~federal department~~
17 ~~of housing and urban development in administering Title XIII of~~
18 ~~the Housing and Urban Development Act of 1968~~ National Flood Insurance
19 Program.

20 § 752. DEFINITIONS

21 For the purpose of this chapter:

1 (1) "Agency" means the agency of natural resources.

2 (2) "Flood hazard area" ~~means an area which would be inundated in a~~
3 ~~flood of such severity that the flood would be statistically likely to occur once~~
4 ~~in every hundred years. In appropriate circumstances this might be the 1927 or~~
5 ~~the 1973 flood. In delineating any flood hazard area for the one hundred year~~
6 ~~flood based upon prior floods, flood control devices such as, but not limited to~~
7 ~~dams, canals, and channel work should be considered in the delineation~~ shall
8 have the same meaning as "area of special flood hazard" under 44 C.F.R.
9 § 59.1.

10 (3) "Floodway" ~~means the channel of a watercourse and adjacent land~~
11 ~~areas which are required to carry and discharge the one hundred year flood~~
12 ~~within a regulated flood hazard area without substantially increasing the flood~~
13 ~~heights delineation~~ shall have the same meaning as "regulatory floodway"
14 under 44 C.F.R. § 59.1.

15 (4) "Flood proofing" ~~means any combination of structural and~~
16 ~~nonstructural additions, changes, or adjustments to properties and structures,~~
17 ~~primarily for the reduction or elimination of flood damage to lands, water and~~
18 ~~sanitary facilities, structures and contents of buildings delineation~~ shall have
19 the same meaning as "flood proofing" under 44 C.F.R. § 59.1.

20 (5) "Legislative body" means the board of selectmen, trustees, mayor,
21 and board of aldermen of a municipality.

1 (6) "Municipality" means any town, city, or incorporated village.

2 (7) ~~"Obstruction" means any natural or artificial condition including but~~
3 ~~not limited to, real estate which may impede, retard, or change the direction of~~
4 ~~the flow of water, either in itself or by catching or collecting debris carried by~~
5 ~~the water, or so situated that the flow of the water might carry it downstream to~~
6 ~~the damage of life or property~~ "National Flood Insurance Program" means the
7 National Flood Insurance Program under 42 U.S.C. chapter 50 and
8 implementing federal regulations.

9 (8) "Regional planning commission" means the regional planning
10 commission of which a municipality is a member or would be a member based
11 upon its location.

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

14 (10) "Accepted agricultural and silvicultural practices" shall have the
15 same meaning as under 24 V.S.A. § 4413(d).

16 (11) "Farm structure" shall have the same meaning as under 24 V.S.A.
17 § 4413(d).

18 § 753. FLOOD HAZARD AREAS; COOPERATION; MAPPING

19 ~~(a) To meet the objective of this chapter and the requirements of 24 V.S.A.~~
20 ~~§ 4412, the designation and management of flood hazard areas shall adhere to~~
21 ~~the following procedure and schedule. All~~ The secretary and all

1 municipalities, regional planning commissions, and departments and agencies
2 of state government shall mutually cooperate to ~~these ends~~ achieve the
3 purposes of this chapter and to secure flood plain insurance for municipalities
4 and the state of Vermont. All correspondence sent to a municipality pursuant
5 to this chapter shall be sent to the municipal clerk, the legislative body, and
6 planning commission. Copies of this correspondence shall be sent to the
7 regional planning commission, the agency of commerce and community
8 development, and the state planning office.

9 (b) The secretary shall, as the information becomes available, provide each
10 municipality with a designation of flood hazard areas. The designation shall
11 include a map or maps.

12 (c) [Repealed.]

13 § 754. FLOOD HAZARD AREA RULES; PERMITS REQUIRED

14 (a) The secretary shall adopt rules pursuant to 3 V.S.A. chapter 25 that
15 shall establish requirements for structures, land uses, and other activities in
16 flood hazard areas in Vermont that are the minimum necessary to ensure that
17 all flood hazard areas of the state are eligible for the National Flood Insurance
18 Program. These rules shall establish permit requirements applicable to
19 structures, land uses, and other activities in flood hazard areas as necessary to
20 achieve statewide eligibility for that program. The rules shall provide that they
21 do not require a permit for a structure or land use in existence as of the

1 effective date of the first set of rules issued under this section if the structure or
2 land use received and remains in compliance with a permit granted under a
3 municipal flood hazard area bylaw approved by the National Flood Insurance
4 Program and the structure or land use is not substantially modified. The rules
5 shall include provisions that determine if such an existing structure or land use
6 is substantially modified and requires a permit under the rules.

7 (b) Prior to issuing the first set of proposed rules under this section, the
8 secretary shall solicit the recommendations of and consult with affected and
9 interested persons such as the secretary of agriculture, food and markets; the
10 regional planning commissions; and the Vermont League of Cities and Towns.

11 (c) On completing the rulemaking process under 3 V.S.A. chapter 25, the
12 secretary promptly shall request the National Flood Insurance Program's
13 approval of rules adopted pursuant to this section.

14 (d) Notwithstanding 3 V.S.A. § 845(d), rules adopted under this section
15 shall take effect 120 days after they are approved by the National Flood
16 Insurance Program.

17 (e) Once rules adopted under this section become effective, no person may
18 in a flood hazard area build, maintain, own, or operate a structure or engage in
19 land use or other activity requiring a permit under those rules without
20 obtaining such a permit from the secretary or a delegated municipality under
21 section 756 of this title.

1 (f) The secretary may amend rules adopted under this section in accordance
2 with 3 V.S.A. chapter 25. When substantial modifications to rules adopted
3 under this section are to be proposed, the secretary shall engage in the
4 consultation process described in subsection (b) of this section prior to issuing
5 proposed rule amendments.

6 § 755. AGRICULTURE; SILVICULTURE; GENERAL PERMIT

7 (a) The secretary shall adopt a general permit under chapter 165 of this title
8 for accepted agricultural and silvicultural practices and farm structures within a
9 flood hazard area. This general permit shall be consistent with the rules
10 adopted under section 754 of this title and shall establish minimum
11 requirements necessary for these practices and structures to comply with the
12 National Flood Insurance Program.

13 (b) Prior to issuing the first general permit under this section, the secretary
14 shall solicit the recommendations of and consult with affected and interested
15 persons, including those persons described in subsection 754(b) of this title.

16 (c) On completing the adoption process under chapter 165 of this title, the
17 secretary promptly shall request the National Flood Insurance Program's
18 approval of a general permit issued pursuant to this section.

19 (d) A general permit adopted under this section shall take effect 120 days
20 after it is approved by the National Flood Insurance Program.

1 (e) The secretary may amend a general permit adopted under this section in
2 accordance with chapter 165 of this title. When substantial modifications to a
3 general permit adopted under this section are to be proposed, the secretary
4 shall engage in the consultation process described in subsection (b) of this
5 section prior to issuing a proposed amendment to the general permit.

6 § 756. DELEGATION OF AUTHORITY TO MUNICIPALITIES

7 (a) A municipality may seek delegation of authority to implement,
8 administer, and enforce permitting requirements established under this chapter
9 in flood hazard areas within the municipality. If a municipality submits a
10 written request for delegation of this authority, the secretary shall delegate
11 authority to the municipality to implement and administer those permitting
12 requirements, the general permit issued under section 755 of this title, and the
13 enforcement provisions of chapter 201 of this title relating to this chapter,
14 provided that the secretary determines that the municipality satisfies each of
15 the following:

16 (1) The municipality has established or will establish a process for
17 accepting, reviewing, and processing applications and issuing permits that
18 complies with the minimum requirements established by the secretary in the
19 rules adopted under section 754 of this title and the general permit under
20 section 755 of this title.

1 (2) The municipality has hired, appointed, or retained on contract, or
2 will hire, appoint, or retain on contract, appropriate qualified personnel to
3 perform the work that must be done by a municipality under this section to
4 grant permits.

5 (3) The municipality will take timely and appropriate enforcement
6 actions pursuant to the authority of chapter 201 of this title.

7 (4) The municipality commits to reporting annually to the secretary on a
8 form and date determined by the secretary.

9 (5) The municipality will comply with all other requirements of the rules
10 adopted under section 754 of this title.

11 (b) A municipality may assess fees in an amount sufficient to support
12 municipal services provided under this section.

13 (c) The secretary shall create and make available a model flood hazard
14 bylaw for potential adoption by delegated municipalities pursuant to 24 V.S.A.
15 chapter 117. However, a delegated municipality need not adopt a flood hazard
16 bylaw unless it seeks, pursuant to 24 V.S.A. § 4424(2)(B)(i)(II) (delegated
17 municipality; flood hazard bylaw; stringency), to adopt requirements for flood
18 hazard areas that are more stringent than the requirements of the rules adopted
19 by the secretary under section 754 of this title.

20 (d) The secretary may review municipal implementation of this section on
21 a random basis, or in response to a complaint, or on his or her own motion.

1 Sec. 2. IMPLEMENTATION; TRANSITION

2 (a) By July 1, 2013, the secretary shall conduct and complete the processes
3 for adopting rules and a general permit under Sec. 1 of this act, 10 V.S.A.
4 §§ 754 (flood hazard area rules; permit required) and 755 (agriculture;
5 silviculture; general permit), and shall submit the adopted rules and general
6 permit to the National Flood Insurance Program (NFIP) for approval.

7 (b) No later than 30 days after the approval of such rules and general
8 permit by the NFIP, the secretary shall notify municipalities of:

9 (1) The effective date of the rules and general permit.

10 (2) The effect of the rules on existing municipal flood hazard area
11 regulation as provided in subsection (c) of this section.

12 (3) The availability of and process for receiving delegation of authority
13 pursuant to Sec. 1 of this act, 10 V.S.A. § 756.

14 (c) Once the first set of rules adopted by the secretary under Sec. 1 of this
15 act, 10 V.S.A. § 754 (flood hazard area rules; permit required), goes into
16 effect, the provisions of those rules shall supersede municipal regulation of
17 flood hazard areas under 24 V.S.A. §§ 4411(b)(3)(G) and 4424. Municipalities
18 subsequently may receive delegation of authority under Sec. 1 of this act,
19 10 V.S.A. § 756.

20 (d) The consolidated executive branch fee report and request to be
21 submitted on or before the third Tuesday of January 2013 pursuant to

1 32 V.S.A. § 605 shall include the agency of natural resources' proposed fee or
2 fees to support the agency's services provided under Sec. 1 of this act,
3 10 V.S.A. §§ 754 (flood hazard area rules; permit required) and 755
4 (agriculture; silviculture; general permit).

5 Sec. 3. 10 V.S.A. § 7501(b) is amended to read:

6 (b) When the secretary deems it to be appropriate and consistent with the
7 purpose of this chapter, the secretary may issue a general permit under the
8 following chapters of this title: chapter 23 (air pollution control) for stationary
9 source construction permits; chapter 32 (flood hazard areas); chapter 37 (water
10 resources management) for aquatic nuisance control permits authorizing
11 chemical treatment by the agency of natural resources, a department within
12 that agency, or an appropriate federal agency; chapter 159 (waste management)
13 for solid waste transfer station and recycling certifications and categorical
14 certifications; and chapter 41 (regulation of stream flow) for stream alteration
15 permits.

16 Sec. 4. 10 V.S.A. § 8003 is amended to read:

17 § 8003. APPLICABILITY

18 (a) The secretary may take action under this chapter to enforce the
19 following statutes and rules, permits, assurances, or orders implementing the
20 following statutes:

21 (1) ~~{Deleted.}~~ 10 V.S.A. chapter 23, relating to air quality;

- 1 (2) 10 V.S.A. chapter ~~23, relating to air quality~~ 32, relating to flood
2 hazard areas;
- 3 (3) 10 V.S.A. chapters 47 and 56, relating to water pollution control,
4 water quality standards, and public water supply;
- 5 (4) 10 V.S.A. chapters 41 and 43, relating to dams and stream
6 alterations;
- 7 (5) 10 V.S.A. chapter 37, relating to wetlands protection and water
8 resources management;
- 9 (6) 10 V.S.A. chapter 48, relating to well drillers and groundwater
10 withdrawal;
- 11 (7) 10 V.S.A. chapter 53, relating to beverage containers;
- 12 (8) 10 V.S.A. chapter 59, relating to underground storage tanks;
- 13 (9) 10 V.S.A. chapter 64, relating to potable water supplies and
14 wastewater systems;
- 15 (10) 10 V.S.A. chapter 151, relating to land use;
- 16 (11) [Deleted.]
- 17 (12) 10 V.S.A. chapter 159, relating to solid waste, hazardous waste,
18 and hazardous materials;
- 19 (13) 10 V.S.A. chapter 161, relating to low-level radioactive waste;
- 20 (14) [Deleted.]
- 21 (15) 29 V.S.A. chapter 11, relating to lands under public waters;

- 1 (C) chapter 41 (regulation of stream flow).
- 2 (D) chapter 43 (dams).
- 3 (E) chapter 47 (water pollution control).
- 4 (F) chapter 48 (groundwater protection).
- 5 (G) chapter 53 (beverage containers; deposit-redemption system).
- 6 (H) chapter 55 (aid to municipalities for water supply, pollution
7 abatement, and sewer separation).
- 8 (I) chapter 56 (public water supply).
- 9 (J) chapter 59 (underground and aboveground liquid storage tanks).
- 10 (K) chapter 64 (potable water supply and wastewater system permit).
- 11 (L) section 2625 (regulation of heavy cutting).
- 12 (M) chapter 123 (protection of endangered species).
- 13 (N) chapter 159 (waste management).
- 14 (O) chapter 37 (wetlands protection and water resources
15 management).
- 16 (P) chapter 166 (collection and recycling of electronic waste).
- 17 (Q) chapter 164A (collection and disposal of mercury-containing
18 lamps).
- 19 (R) chapter 32 (flood hazard areas), including an act or decision of a
20 delegated municipality under section 756 of this title.
- 21 (2) 29 V.S.A. chapter 11 (management of lakes and ponds).

1 (3) 24 V.S.A. chapter 61, subchapter 10 (relating to salvage yards).

2 Sec. 6. 6 V.S.A. § 4810(a) is amended to read:

3 (a) Agricultural land use practices. In accordance with 10 V.S.A.
4 § 1259(i), the secretary shall adopt by rule, pursuant to 3 V.S.A. chapter 25 ~~of~~
5 ~~Title 3~~, and shall implement and enforce agricultural land use practices in order
6 to reduce the amount of agricultural pollutants entering the waters of the state.
7 These agricultural land use practices shall be created in two categories,
8 pursuant to subdivisions (1) and (2) of this subsection.

9 (1) "Accepted Agricultural Practices" (AAPs) shall be standards to be
10 followed in conducting agricultural activities in this state. These standards
11 shall address activities which have a potential for causing pollutants to enter
12 the groundwater and waters of the state, including dairy and other livestock
13 operations plus all forms of crop and nursery operations and on-farm or
14 agricultural fairground, registered pursuant to 20 V.S.A. § 3902, livestock and
15 poultry slaughter and processing activities. The AAPs shall include, as well as
16 promote and encourage, practices for farmers in preventing pollutants from
17 entering the groundwater and waters of the state when engaged in, but not
18 limited to, animal waste management and disposal, soil amendment
19 applications, plant fertilization, and pest and weed control. Persons engaged in
20 farming, as defined in 10 V.S.A. § 6001, who follow these practices shall be
21 presumed to be in compliance with water quality standards. AAPs shall be

1 practical and cost effective to implement. The AAPs for groundwater shall
2 include a process under which the agency shall receive, investigate, and
3 respond to a complaint that a farm has contaminated the drinking water or
4 groundwater of a property owner.

5 (2) "Best Management Practices" (BMPs) may be required by the
6 secretary on a case by case basis. Before requiring BMPs, the secretary shall
7 determine that sufficient financial assistance is available to assist farmers in
8 achieving compliance with applicable BMPs. BMPs shall be practical and cost
9 effective to implement.

10 (3) Requirements for agricultural land use practices in flood hazard
11 areas as defined under 10 V.S.A. § 752 shall be established by the general
12 permit issued by the agency of natural resources pursuant to 10 V.S.A. § 755
13 (agriculture; silviculture).

14 Sec. 7. 24 V.S.A. § 4303(8) is amended to read:

15 (8) "Flood hazard area" for purposes of ~~section 4424~~ sections 4411 and
16 4424 of this title ~~means the land subject to flooding from the base flood. "Base~~
17 ~~flood" means the flood having a one percent chance of being equaled or~~
18 ~~exceeded in any given year~~ shall have the same meaning as "area of special
19 flood hazard" under 44 C.F.R. § 59.1. Further, with respect to flood and other
20 hazard area regulation pursuant to this chapter, the following terms shall have
21 the following meanings:

1 (A) “Floodproofing” ~~means any combination of structural and~~
2 ~~nonstructural additions, changes, or adjustments to properties and structures~~
3 ~~that substantially reduce or eliminate flood damage to any combination of real~~
4 ~~estate, improved real property, water or sanitary facilities, structures, and the~~
5 ~~contents of structures~~ shall have the same meaning as “flood proofing” under
6 44 C.F.R. § 59.1.

7 (B) “Floodway” ~~means the channel of a river or other watercourse~~
8 ~~and the adjacent land area that must be reserved in order to discharge the base~~
9 ~~flood without accumulatively increasing the water surface elevation more than~~
10 ~~one foot~~ shall have the same meaning as “regulatory floodway” under
11 44 C.F.R. § 59.1.

12 (C) “Hazard area” means land subject to landslides, soil erosion,
13 earthquakes, water supply contamination, or other natural or human-made
14 hazards as identified within a “local mitigation plan” in conformance with and
15 approved pursuant to the provisions of 44 C.F.R. ~~section~~ § 201.6.

16 (D) “National Flood Insurance Program” means the National Flood
17 Insurance Program under 42 U.S.C. chapter 50 and implementing federal
18 regulations.

19 ~~(D)~~(E) “New construction” means construction of structures or filling
20 commenced on or after the effective date of the adoption of a community’s
21 flood hazard bylaws.

1 ~~(E)~~(F) “Substantial improvement” means any repair, reconstruction,
2 or improvement of a structure, the cost of which equals or exceeds 50 percent
3 of the market value of the structure either before the improvement or repair is
4 started or, if the structure has been damaged and is being restored, before the
5 damage occurred. However, the term does not include either of the following:

6 (i) Any project or improvement of a structure to comply with
7 existing state or local health, sanitary, or safety code specifications that are
8 solely necessary to assure safe living conditions.

9 (ii) Any alteration of a structure listed on the National Register of
10 Historic Places or a state inventory of historic places.

11 Sec. 8. 24 V.S.A. § 4411 is amended to read:

12 § 4411. ZONING BYLAWS

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

19 (1) Specific uses of land and shoreland facilities;

20 (2) Dimensions, location, erection, construction, repair, maintenance,
21 alteration, razing, removal, and use of structures;

1 (3) Areas and dimensions of land to be occupied by uses and structures,
2 as well as areas, courts, yards, and other open spaces and distances to be left
3 unoccupied by uses and structures;

4 (4) Timing or sequence of growth, density of population, and intensity
5 of use;

6 (5) Uses within a river corridor and buffer, as those terms are defined in
7 10 V.S.A. §§ 1422 and 1427.

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

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

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

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

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

9 (B) Natural or artificial bodies of water.

10 (C) Places of relatively steep slope or grade.

11 (D) Public buildings and public grounds.

12 (E) Aircraft and helicopter facilities.

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

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

19 (H) River corridors and buffers, as those terms are defined in
20 10 V.S.A. §§ 1422 and 1427.

1 (I) Flood hazard areas, but only if the municipality is delegated
2 authority to regulate these areas by the secretary of natural resources under
3 10 V.S.A. § 756. The provisions of subdivision 4424(2) of this title shall apply
4 to zoning bylaws that regulate flood hazard areas.

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

7 Sec. 9. 24 V.S.A. § 4424 is amended to read:

8 § 4424. SHORELANDS; FLOOD OR HAZARD AREA; SPECIAL OR
9 FREESTANDING BYLAWS

10 Any municipality may adopt freestanding bylaws under this chapter to
11 address particular areas in conformance with the plan, including the following,
12 which may also be part of zoning or unified development bylaws:

13 (1) Bylaws to regulate development and use along shorelands.

14 (2) Bylaws to regulate development and use in flood or other hazard
15 areas. A municipality may adopt a flood hazard area bylaw only if it is
16 delegated authority to regulate flood hazard areas by the secretary of natural
17 resources pursuant to 10 V.S.A. § 756. The following shall apply if flood or
18 other hazard area bylaws are enacted:

19 (A) Purposes.

20 (i) To minimize and prevent the loss of life and property, the
21 disruption of commerce, the impairment of the tax base, and the extraordinary

1 public expenditures and demands on public service that result from flooding,
2 landslides, erosion hazards, earthquakes, and other natural or human-made
3 hazards.

4 (ii) To ensure that the design and construction of development in
5 flood and other hazard areas are accomplished in a manner that minimizes or
6 eliminates the potential for flood and loss or damage to life and property.

7 (iii) To manage all flood hazard areas designated pursuant to
8 10 V.S.A. § 753.

9 (iv) To make the state and municipalities eligible for federal flood
10 insurance and other federal disaster recovery and hazard mitigation funds as
11 may be available.

12 (B) Contents of bylaws. Flood and other hazard area bylaws ~~may~~:

13 (i) In the case of a flood hazard area:

14 (I) Shall provide for regulation that is not less in scope or
15 stringency or any other respect than the minimum requirements established by
16 the secretary of natural resources in rules adopted pursuant to 10 V.S.A. § 754
17 (flood hazard area rules; permits required).

18 (II) May enact restrictions that are more stringent than the
19 requirements established under rules adopted pursuant to 10 V.S.A. § 754.

20 However, a municipality may regulate practices or structures governed by a
21 general permit issued under 10 V.S.A. § 755 (agriculture; silviculture; general

1 permit) only in conformance with the terms of the general permit and only if it
2 is delegated authority to implement, administer, and enforce that permit
3 pursuant to 10 V.S.A. § 756.

4 (ii) ~~Contain~~ May contain standards and criteria that prohibit the
5 placement of damaging obstructions or structures, the use and storage of
6 hazardous or radioactive materials, and practices that are known to further
7 exacerbate hazardous or unstable natural conditions.

8 ~~(ii)(iii)~~ ~~Require~~ May require flood and hazard protection through
9 elevation, floodproofing, disaster preparedness, hazard mitigation, relocation,
10 or other techniques.

11 ~~(iii)(iv)~~ ~~Require~~ May require adequate provisions for flood
12 drainage and other emergency measures.

13 ~~(iv)(v)~~ ~~Require~~ May require provision of adequate and
14 disaster-resistant water and wastewater facilities.

15 ~~(v)(vi)~~ ~~Establish~~ May establish other restrictions to promote the
16 sound management and use of designated flood and other hazard areas.

17 (C) Effect on zoning bylaws. Flood or other hazard area bylaws may
18 alter the uses otherwise permitted, prohibited, or conditional in a flood or other
19 hazard area under a bylaw, as well as the applicability of other provisions of
20 that bylaw. Where a flood hazard bylaw, a hazard area bylaw, or both apply
21 along with any other bylaw, compliance with the flood or other hazard area

1 bylaw shall be prerequisite to the granting of a zoning permit. Where a flood
2 hazard area bylaw or a hazard area bylaw but not a zoning bylaw applies, the
3 flood hazard and other hazard area bylaw shall be administered in the same
4 manner as are zoning bylaws, and a flood hazard area or hazard area permit
5 shall be required for land development covered under the bylaw.

6 (D) Mandatory provisions. All flood and other hazard area bylaws
7 shall provide that no permit for new construction or substantial improvement
8 shall be granted for a flood or other hazard area until after both the following:

9 (i) A copy of the application is mailed or delivered by the
10 administrative officer or by the appropriate municipal panel to the agency of
11 natural resources.

12 (ii) Either 30 days have elapsed following the mailing or the
13 agency delivers comments on the application.

14 (E) Special exceptions. The appropriate municipal panel, after public
15 hearing, may approve the repair, relocation, replacement, or enlargement of a
16 nonconforming structure within a regulated flood or other hazard area, subject
17 to compliance with applicable federal and state laws and regulations, and
18 provided that the following criteria are met:

19 (i) The appropriate municipal panel finds that the repair,
20 relocation, or enlargement of the nonconforming structure is required for the
21 continued economically feasible operation of a nonresidential enterprise.

1 (ii) The appropriate municipal panel finds that the repair,
2 relocation, or enlargement of the nonconforming structure will not increase
3 flood levels in the regulatory floodway, increase the risk of other hazard in the
4 area, or threaten the health, safety, and welfare of the public or other property
5 owners.

6 (iii) The permit so granted states that the repaired, relocated, or
7 enlarged nonconforming structure is located in a regulated flood or other
8 hazard area, does not conform to the bylaws pertaining to that area, and will be
9 maintained at the risk of the owner.

10 Sec. 10. EFFECTIVE DATES

11 (a) This section and Secs. 1–5 of this act (10 V.S.A. chapter 32;
12 implementation; transition; 10 V.S.A. §§ 7501(b), 8003(a), and 8503(a)) shall
13 take effect on passage.

14 (b) Secs. 6–9 of this act (6 V.S.A. § 4810(a) and 24 V.S.A. §§ 4303(8),
15 4411, and 4424) shall take effect on October 1, 2013.