

1 H.223

2 Introduced by Representative Deen of Westminster

3 Referred to Committee on

4 Date:

5 Subject: Conservation and development; shorelands; development; permitting

6 Statement of purpose of bill as introduced: This bill proposes to authorize the

7 Secretary of Natural Resources to adopt by rule requirements for ground

8 disturbances and development within shoreland zones adjacent to the lakes of

9 the State.

10 An act relating to shoreland protection requirements for lakes

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

12 Sec. 1. LEGISLATIVE FINDINGS AND LEGISLATIVE INTENT

13 (a) The General Assembly finds that:

14 (1) The shorelands of the State are among its most valuable and fragile

15 natural resources, and their protection is essential to maintain the integrity of

16 lake waters.

17 (2) The lakes of Vermont are valuable resources held in trust by the

18 State. The State has an interest in protecting those waters, and has the

19 jurisdiction to control the use of lakes and the adjacent shorelands for the

20 greatest public benefit.

1 (3) There is great concern throughout the State relating to the utilization,
2 protection, restoration, and preservation of shorelands because of their effect
3 on lake waters.

4 (4) Under current law, the potential exists for uncoordinated, unplanned,
5 and piecemeal development along lake shorelands, which could result in
6 significant negative impacts on the lake waters of Vermont.

7 (b) To fulfill the State's role as trustee of its waters and to promote public
8 health, safety, and the general welfare, the General Assembly declares that the
9 public interest requires the establishment of standards for disturbances and
10 development of the shorelands of the lakes of Vermont.

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

12 § 1421. POLICY

13 To aid in the fulfillment of the ~~state's~~ State's role as trustee of its navigable
14 waters and to promote public health, safety, convenience, and general welfare,
15 it is declared to be in the public interest to make studies, establish policies,
16 make plans, make rules, establish minimum waterfront protection standards,
17 and authorize municipal shoreland zoning bylaws, all for the efficient use,
18 conservation, development, and protection of the ~~state's~~ State's water
19 resources. The purposes of the rules shall be to further the maintenance of safe
20 and healthful conditions; prevent and control water pollution; protect
21 spawning grounds, fish and aquatic life; control building sites, placement of

1 structures, and land uses; reduce fluvial erosion hazards; reduce property loss
2 and damage; preserve shore cover, natural beauty, and natural stability; and
3 provide for multiple use of the waters in a manner to provide for the best
4 interests of the citizens of the ~~state~~ State.

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

6 § 1422. DEFINITIONS

7 In this chapter, unless the context clearly requires otherwise:

8 (1) “Agency” means the ~~agency of natural resources~~ Agency of Natural
9 Resources.

10 (2) ~~“Board” means the water resources panel of the natural resources~~
11 ~~board.~~ [Repealed.]

12 (3) “Department” means ~~department of environmental conservation~~ the
13 Department of Environmental Conservation.

14 (4) “Navigable water” or “navigable waters” means Lake Champlain,
15 Lake Memphremagog, the Connecticut River, all natural inland lakes within
16 Vermont, and all streams, ponds, flowages, and other waters within the
17 territorial limits of Vermont, including the Vermont portion of boundary
18 waters, which are boatable under the laws of this ~~state~~ State.

19 (5) “Public shorelands” means state-owned lands adjacent to navigable
20 waters.

1 (6) “Public waters” means navigable waters excepting those waters in
2 private ponds and private preserves as set forth in sections 5204, 5205, 5206,
3 and 5210 of this title.

4 (7) “Secretary” means the ~~secretary of natural resources~~ Secretary of
5 Natural Resources or the ~~secretary’s~~ Secretary’s duly authorized
6 representative.

7 (8) “Shorelands” means the lands being between the normal mean water
8 level of a lake, ~~pond, or impoundment~~ exceeding 20 acres and a line not less
9 than 500 feet nor more than 1,000 feet from such mean water level.

10 (9) “Outstanding resource waters” mean waters of the ~~state~~ State
11 designated by the ~~secretary~~ Secretary as having exceptional natural,
12 recreational, cultural, or scenic values.

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

19 (11) “Lake” means a body of standing water, including a pond or a
20 reservoir, which may have natural or artificial water level control. Private
21 ponds as defined under section 5210 of this title, and reservoirs specifically

1 constructed for the following purposes shall not be considered lakes:
2 snowmaking storage, golf course irrigation, stormwater management, and fire
3 suppression.

4 * * *

5 (18) "Infrastructure" means public and private buildings, roads, and
6 public works, including public and private buildings; state and municipal
7 highways and roads; bridges; sidewalks and other traffic enhancements;
8 culverts; private roads; public and private utility construction, state and
9 municipal public works, cemeteries, and public parks and fields.

10 * * *

11 (21) "Accessory structure" means a structure detached from the primary
12 building on the same lot and customarily incidental and subordinate to the
13 primary building or use.

14 (22) "Disturbance" means the removal of native vegetation so that
15 underlying soil is exposed.

16 (23) "Groundcover" means any native herbaceous plant which normally
17 grows to a mature height of four feet or less.

18 (24) "Lakeside zone" means all land located within 100 feet of the
19 reference line of a lake.

20 (25) "Land development" shall have the same meaning as in 24 V.S.A.
21 § 4303.

1 (26) “Mean water level” means:

2 (A) for Lake Champlain, 95.5 feet above mean sea level;

3 (B) for those lakes and ponds that have an artificial structure which
4 controls the flow of water at the outlet:

5 (i) the elevation of the spillway plus the mean depth of the
6 flowage over the spillway as measured during the period of June 1 to
7 September 15; or

8 (ii) that level which has been customarily maintained during the
9 period of June 1 to September 15 if this level is other than the spillway
10 elevation plus the mean depth of flowage over the spillway; and

11 (C) for those lakes and ponds that have natural outlets, except for
12 Lake Champlain, the elevation of the natural control section plus the mean
13 depth of flowage over it as measured during the period of June 1 to
14 September 15.

15 (27) “Nonconforming use” means a use of shoreland, including an
16 existing lot or structure, that does not conform to the shoreland rules adopted
17 by the Secretary but did conform to all applicable laws, ordinances, and
18 regulations prior to the enactment of the present shoreland rules.

19 (28) “Primary structure” means a structure other than one which is used
20 for purposes wholly incidental or accessory to the use of another structure on
21 the same premises.

1 (29) “Protected shoreland zone” means all land located within 250 feet
2 from the mean water level of a lake.

3 (30) “Structure” means anything built for the support, shelter, or
4 enclosure of persons, animals, goods, or property of any kind, as well as
5 anything constructed or erected with a fixed location on or in the ground,
6 exclusive of fences.

7 (31) “Vegetative cover” means mixed native vegetation within the
8 shoreland, consisting of trees, shrubs, groundcover, and duff.

9 Sec. 4. 10 V.S.A. chapter 49, subchapter 3 is added to read:

10 Subchapter 3. Shoreland Protection

11 § 1431. PURPOSE; GOALS

12 It is the intent of the General Assembly that shoreland protection standards
13 adopted under this chapter shall further the goals of:

14 (1) providing for the protection of lake waters;

15 (2) providing for the wise use of lake shoreland resources;

16 (3) preventing or controlling water pollution;

17 (4) protecting fish and other aquatic life, and bird and other wildlife
18 habitats;

19 (5) mitigating damage to development and lake shorelands from floods
20 and accelerated erosion;

21 (6) conserving shoreland cover and points of access to lake waters;

- 1 (7) preventing the spread of invasive exotic species;
2 (8) protecting public use of lake waters, including recreation; and
3 (9) preserving and furthering the economic benefits of lake waters and
4 their shorelands.

5 § 1432. SHORELAND PROTECTION STANDARDS

6 (a) Required rules. On or before July 1, 2015, the Secretary shall adopt by
7 rule standards for the permitting of disturbances and development in lakeside
8 zones and protected shoreland zones within the State. The Secretary shall
9 design the standards required by this section to minimize shoreland disturbance
10 in order to protect lake waters, while accommodating reasonable levels of
11 shoreland development adjacent to lakes.

12 (b) Lakeside zones; disturbances. The standards required under subsection
13 (a) of this section shall include requirements for disturbances and land
14 development in lakeside zones, including:

15 (1) Buffers. Requirements for establishing and maintaining a buffer
16 within the lakeside zone. The requirements for a buffer within the lakeside
17 zone shall:

18 (A) define the minimum level, standard, or amount of vegetative
19 cover necessary within the lakeside zone in order to minimize or reduce
20 erosion and runoff to lake waters;

1 (B) specify when additional vegetative cover may be necessary
2 within the lakeside zone if a lake is prone to flooding or experiences significant
3 water level fluctuations;

4 (C) specify how vegetative cover, including dead, diseased, or fallen
5 trees, and invasive plant species shall be removed;

6 (D) specify whether and how vegetative cover may be removed to
7 clear an opening for authorized development or use within the lakeside
8 zone; and

9 (E) specify how to conduct other disturbances or removal of
10 vegetative cover within the lakeside zone.

11 (2) Land development. Requirements for land development within the
12 lakeside zone, including:

13 (A) construction, reconstruction, conversion, structural alteration,
14 relocation, or enlargement of any structure; and

15 (B) any change in the use of any building or other structure, or land,
16 or extension of use of land.

17 (3) Limitations on activities. Requirements or limitations for certain
18 activities within the lakeside zone, including:

19 (A) Fertilizer shall be prohibited from being applied in the lakeside
20 zone.

1 (B) Encroachments in the lakeside zone shall be permitted by the
2 Secretary, pursuant to 29 V.S.A. chapter 11.

3 (C) Sea walls, berms, or other construction designed to limit erosion
4 or flood risks shall be permitted by the Secretary.

5 (D) Silvicultural or agricultural activities in the lakeside zone shall
6 comply with the Agency of Natural Resources rules under section 754 of this
7 title for silvicultural or agricultural activities in a flood hazard area.

8 (4) Authorized uses. The standards required under subsection (a) of this
9 section shall include authorized uses within the lakeside zone, including:

10 (A) pathways or trails to the lake; and

11 (B) small clearings in vegetative cover within the lakeside zone in
12 order to allow for recreation or uses attendant to structures.

13 (c) Protected shoreland zone. The standards required under subsection (a)
14 of this section shall include requirements for disturbances and land
15 development in protected shoreland areas, including:

16 (1) requiring new primary structures to be set back 25 feet from the
17 lakeside zone;

18 (2) establishing maximum building heights for new primary structures;

19 (3) establishing minimum lot sizes and lake frontage for new lots
20 created after July 1, 2013;

1 (4) limiting the amount of impervious surface, as that term is defined in
2 section 1264 of this title, including design requirements for new driveways and
3 new highways, as that term is defined in 19 V.S.A. § 1;

4 (5) requiring water-erosion prevention and sediment control measures
5 during construction;

6 (6) prohibiting the establishment of new or expansion of existing salt
7 storage yards, junkyards, solid waste facilities, or hazardous waste facilities
8 within a shoreland of a lake;

9 (7) permit the construction, redevelopment, or expansion of the
10 following in the protected shoreland zone only when necessary to promote the
11 general good of the State, as determined by the Secretary:

12 (A) public water systems regulated under chapter 56 of this title;

13 (B) placement and expansion of public water and sewage treatment
14 facilities;

15 (C) hydroelectric facilities, including dams, dikes, penstocks, and
16 powerhouses; and

17 (D) public utility lines.

18 (d) Nonconforming uses. The standards required under subsection (a) of
19 this section shall include requirements or limitation on activities within the
20 protected shoreland zone, including the expansion, repair, or renovation of

1 existing primary and accessory structures and the expansion or amendment of
2 nonconforming uses in the protected shoreland zone.

3 (e) General permit. The rules authorized by this section may establish
4 requirements for a general permit to implement the requirements of this
5 section, including authorization under the general permit to conduct a specified
6 land development or disturbance without notifying or reporting to the
7 Secretary.

8 § 1433. SHORELAND PERMIT

9 (a) Permit requirement. Beginning January 1, 2016, a person shall not
10 commence or conduct land development or a disturbance in the protected
11 shoreland zone or, when applicable, within a shoreland without a permit issued
12 by the Secretary under the rules required under section 1432 of this title.

13 (b) Variances. The Secretary shall have the authority to grant variances
14 from the requirements of this section or the rules adopted under section 1432
15 of this title. A variance shall be granted under this section according to the
16 criteria governing the grant of a variance by a zoning board of adjustment
17 under 24 V.S.A. § 4468.

18 § 1434. DELEGATION OF AUTHORITY TO MUNICIPALITIES

19 (a) If a municipality submits a written request for delegation of permitting
20 required under section 1433 of this title, the Secretary shall delegate authority
21 to the municipality to implement and administer provisions of this subchapter.

1 the rules adopted under this subchapter, and the enforcement provisions of
2 chapter 201 of this title relating to this subchapter, provided that the Secretary
3 is satisfied that the municipality:

4 (1) has adopted by bylaw or ordinance requirements for land
5 development or disturbance in lakeside zones and protected shoreland zones
6 that are at least as stringent as the rules adopted by the Secretary under section
7 1432 of this title;

8 (2) has established a process for accepting, reviewing, and processing
9 applications and issuing permits for land development or disturbance in
10 lakeside zones and protected shoreland zones;

11 (3) has sufficient staff to implement the requirements of this subchapter
12 and grant the permits required by this subchapter;

13 (4) will take timely and appropriate enforcement actions pursuant to the
14 authority of chapter 201 of this title;

15 (5) commits to reporting annually to the Secretary on a form and date
16 determined by the Secretary; and

17 (6) will comply with all other requirements of the rules adopted under
18 section 1432 of this title.

19 (b) As of January 1, 2016, those provisions of municipal ordinances and
20 zoning bylaws that regulate land development or disturbances within lakeside

1 zones and protected shoreland zones are superseded by the provisions of this
2 subchapter and the rules adopted under this subchapter.

3 (c) A municipality may assess fees in an amount sufficient to support
4 municipal services provided under this section.

5 (d) Notwithstanding the fact that local ordinances and bylaws may have
6 been superseded by this chapter, a permit issued under those ordinances shall
7 remain in effect, unless and until superseded by a permit issued pursuant to the
8 provisions of this subchapter.

9 (e) The Secretary may review municipal implementation of this section on
10 a random basis, or in response to a complaint, or on his or her own motion.
11 This review may include consideration of the municipal implementation itself,
12 consideration of the permitting requirements, permitting practices, approved
13 land development or disturbances, enforcement, and any work associated with
14 the performance of these tasks.

15 Sec. 5. 10 V.S.A. § 8003(a) is amended to read:

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

18 * * *

19 (22) 10 V.S.A. chapter 164A, collection and disposal of
20 mercury-containing lamps; ~~and~~

