

1 H.394

2 Introduced by Representative Deen of Westminster

3 Referred to Committee on

4 Date:

5 Subject: Conservation and development; water resources; wetlands; resource
6 determinations

7 Statement of purpose of bill as introduced: This bill proposes to authorize the
8 Secretary of Natural Resources to make site-specific determinations regarding
9 the use or classification of the waters and wetlands of the State.

10 An act relating to authorizing the Secretary of Natural Resources to make
11 site-specific resource determinations

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

13 Sec. 1. 10 V.S.A. chapter 167 is added to read:

14 CHAPTER 167. RESOURCE DETERMINATIONS

15 § 7601. POLICY

16 It is the policy of the State to promote the protection of Vermont's surface
17 waters and wetlands. This policy is promoted through the Secretary's
18 authority over the following surface water and wetlands rules formerly
19 managed by the Water Resources Panel: the Vermont Water Quality
20 Standards, Vermont Wetland Rules, Rules for the Management of Lakes and

1 Ponds, the Vermont Use of Public Waters Rule, the Vermont Surface Level
2 Rules, the Rules Governing Mean Water Levels, classifications of waters, and
3 designations of Class I wetlands and outstanding resource rater. This section
4 acknowledges the critical role of the Secretary in implementing and
5 administering the State’s policy of resource protection and, to further this role,
6 authorizes the use by the Secretary of both rulemaking under 3 V.S.A.
7 chapter 25 and site-specific resource determinations under this chapter as
8 methods by which the Secretary may continue to protect Vermont’s surface
9 waters and wetlands.

10 § 7602. DEFINITIONS

11 As used in this chapter:

12 (1) “Agency” means the Agency of Natural Resources.

13 (2) “Municipality” means any city, town, or village in the State of
14 Vermont.

15 (3) “Outstanding resource water” means a water designated by the
16 Agency as an outstanding resource water under section 1424a of this title.

17 (4) “Person” means an individual, partnership, corporation, association,
18 unincorporated organization, trust, joint venture, affiliated ownership; a
19 federal, state, or municipal department, agency, or subdivision; or any other
20 legal or commercial entity.

21 (5) “Resource determination” means a site-specific determination
22 proceeding conducted by the Secretary under chapter 108 of this title and that

1 is initiated either on the motion of the Secretary or by petition of any person to
2 implement or administer authority set forth in section 7603 of this title.

3 (6) “Secretary” means the Secretary of the Agency.

4 (7) “Site-specific” means an individual surface water or wetland that
5 may be situated on land owned by one or more entities.

6 (8) “Surface waters” shall have the same meaning as “waters” in
7 section 1251 of this title.

8 (9) “Wetland” shall have the same meaning as in section 902 of this
9 title.

10 § 7603. RESOURCE DETERMINATIONS; AUTHORITY

11 (a) The Secretary may issue a site-specific resource determination to:

12 (1) designate a particular water as an outstanding resource water under
13 section 1424a of this title;

14 (2) classify or reclassify a wetland as a Class I wetland pursuant to
15 section 905b of this title;

16 (3) establish, authorize, or amend authorized uses of a particular water
17 under section 1424 of this title;

18 (4) adjust surface level requirements for a particular water body under
19 section 1424 of this title;

20 (5) adjust mean water levels for a particular water under 29 V.S.A.
21 § 401; and

1 (6) classify or reclassify a particular water as a Class A or Class B
2 surface water pursuant to section 1253 of this title.

3 (b) The Secretary may issue site-specific resource determinations relating
4 to an individual surface water or an individual wetland according to the criteria
5 set forth in the statutes specified in subsection (a) of this section and rules
6 adopted under those statutes.

7 § 7604. PETITION PROCESS

8 (a) Any person may petition the Secretary for a resource determination
9 under 7503 of this title by filing a resource determination petition with the
10 Secretary.

11 (b) A petition for a resource determination shall be in writing on a form
12 provided by the Secretary. A resource determination petition form shall
13 include the nature and purpose of the petition, a summary of the action sought
14 and the basis for the action, the name of the petitioner, and any additional
15 information required by the Secretary.

16 (c) Upon receipt of the petition, the Secretary shall notify the petitioner
17 whether the petition is administratively and technically complete or requires
18 resubmission or additional information. After the Secretary has determined
19 that a petition is administratively and technically complete and prior to a final
20 decision on the petition, the Secretary shall conduct a technical analysis based
21 on the applicable statutory and regulatory criteria specific to the petition type.

1 § 7605. PUBLIC PARTICIPATION

2 (a) After the Secretary has determined that a petition is administratively
3 and technically complete and prior to a final decision on the petition, the
4 Secretary shall notify:

5 (1) all persons identified in the petition as requiring notice; and

6 (2) all other interested persons, including: the petitioner, the town clerk
7 or clerks of the municipality in which the relevant water or wetland is located,
8 the local and regional planning commission serving the area in which the
9 relevant water or wetland is located, persons and organizations with interest in
10 public waters in Vermont on an interested parties list maintained by the
11 Secretary, owners of property that abuts the relevant water or wetland,
12 legislators representing the area in which the relevant water or wetland is
13 located, interested state and federal administrative agencies and departments,
14 and any other interested party listed by rule or who requests notice.

15 (b) The Secretary shall hold at least one public meeting regarding the
16 proposed resource determination in a place convenient to the water or wetland
17 that is the subject of the resource determination petition. The Secretary shall
18 hold the hearing no sooner than 30 days after sending notice to all interested
19 parties under subsection (a) of this section. The Secretary shall provide for
20 public notice and comment regarding the proposed resource determination.

21 (c) At the time the Secretary issues a resource determination, the Secretary
22 also shall provide a response summary to written comments received during

1 the public comment period. The Secretary shall publish the Secretary's
2 determination decision and the response summary on the Agency's website
3 and send the notice of the decision and response summary to all interested
4 parties.

5 § 7606. RULEMAKING

6 The Secretary may adopt by rule requirements, procedures, processes, and
7 other requirements necessary to implement the Secretary's authority under this
8 chapter to issue site-specific resource determinations.

9 § 7607. APPLICATION TO OTHER LAW

10 The authority of the Secretary under this chapter to issue site-specific
11 resource determinations for a surface water or wetland shall not affect or
12 restrict the statutory authority of the Secretary to adopt rules to implement
13 authority within the jurisdiction of the Secretary, and the Secretary may adopt
14 or amend the following rules pursuant to rulemaking authority under 3 V.S.A.
15 chapter 25:

16 (1) chapters 1–3 of the Vermont Water Quality Standards;

17 (2) the Vermont Wetlands Rules;

18 (3) the Rules for the Management of Lakes and Ponds; and

19 (4) the Vermont Use of Public Waters Rules, the Vermont Surface Level
20 Rules, and the Vermont Rules Governing Mean Water Levels regarding
21 general application of those rules and not regarding site-specific authority for
22 waters or wetlands.

1 § 7608. APPEALS

2 An act or decision of the Secretary under this chapter, including a resource
3 determination, may be appealed under chapter 220 of this title.

4 Sec. 2. 10 V.S.A. § 905b is amended to read:

5 § 905b. DUTIES; POWERS

6 The ~~department~~ Department shall protect and manage the water resources
7 of the ~~state~~ State in accordance with the provisions of this subchapter and shall:

8 * * *

9 (18) study and investigate the wetlands of the ~~state~~ State and cooperate
10 with municipalities, the general public, and other agencies, ~~and the board~~ in
11 collecting and compiling data relating to wetlands, ~~propose to the board~~
12 ~~specific wetlands to be designated as Class I wetlands~~ designate Class I
13 wetlands under chapter 167 of this title, issue or deny permits pursuant to
14 section 6025 of this title and the rules authorized by this subdivision, issue
15 wetland determinations pursuant to section 914 of this title, issue orders
16 pursuant to section 1272 of this title, and in accordance with 3 V.S.A.
17 chapter 25, adopt rules to address the following:

18 * * *

19 Sec. 3. 10 V.S.A. § 915 is amended to read:

20 § 915. CLASS I WETLANDS

21 The classification of any wetland as a Class I wetland, the reclassification of
22 a Class I wetland as a Class II or III wetland, the reclassification of any Class

1 II or III wetland as a Class I wetland, or the modification of the buffer zone of
2 a Class I wetland shall be made by the ~~department pursuant to the rulemaking~~
3 ~~provisions of 3 V.S.A. chapter 25~~ Department under chapter 167 of this title.

4 Sec. 4. 10 V.S.A. § 1251a is amended to read:

5 § 1251a. WATER POLLUTION ADMINISTRATION

6 (a) The ~~secretary~~ Secretary may adopt rules and issue resource
7 determinations under chapter 167 of this title, in accordance with the
8 procedures in the Administrative Procedure Act, which are necessary for the
9 proper administration of the ~~secretary's~~ Secretary's duties under this
10 subchapter, including a planning process approvable under ~~Public Law 92-500~~
11 ~~as amended~~ the Clean Water Act, 33 U.S.C. §§ 1251-1376, and rules adopted
12 thereunder.

13 * * *

14 (c) On or before ~~January 15, 2008~~ January 1, 2014, the ~~secretary of natural~~
15 ~~resources~~ Secretary of Natural Resources shall propose draft rules for an
16 implementation process for the antidegradation policy in the water quality
17 standards of the ~~state~~ State. The implementation process for the
18 antidegradation policy shall be consistent with the state water quality policy
19 established in section 1250 of this title, the Vermont water quality standards,
20 and any applicable requirements of the federal Clean Water Act. On or before
21 ~~July 1, 2008~~ July 1, 2014, a final proposal of the rules for an implementation

1 process for the antidegradation policy shall be filed with the ~~secretary of state~~
2 Secretary of State under 3 V.S.A. § 841.

3 Sec. 5. 10 V.S.A. § 1424(e) is amended to read:

4 (e) On receipt of a written request that the ~~secretary adopt, amend, or repeal~~
5 ~~a rule~~ Secretary issue a resource determination under chapter 167 of this title
6 with respect to the use of public waters signed by not less than one person, the
7 ~~secretary~~ Secretary shall consider the ~~adoption of rules authorized under this~~
8 ~~section and take appropriate action as required under 3 V.S.A. § 806~~ issuance
9 of the determination requested.

10 Sec. 6. 10 V.S.A. § 1424a is amended to read:

11 § 1424a. OUTSTANDING RESOURCE WATERS

12 (a) The ~~secretary, on its own motion,~~ Secretary may hold a public ~~hearing~~
13 meeting on the question of whether particular waters should be designated as
14 outstanding resource waters, or whether an existing designation should be
15 amended or repealed. On receipt of a signed written request or on the
16 ~~secretary's~~ Secretary's own motion, the ~~secretary~~ Secretary shall consider ~~the~~
17 ~~adoption, amendment, or repeal of rules~~ issuing a resource determination
18 regarding outstanding resource water designation ~~and shall take appropriate~~
19 ~~action as required under 3 V.S.A. § 806~~ under chapter 167 of this title. Any
20 ~~hearing~~ public meeting shall be held convenient to the waters in question, or in
21 a county where the waters are located.

1 (b) ~~Any hearing shall be conducted as part of the rulemaking process~~
2 ~~established under 3 V.S.A. chapter 25. [Deleted.]~~

3 * * *

4 (e) After consideration of all relevant information and public input, the
5 ~~secretary~~ Secretary shall ~~adopt rules~~ issue a resource determination under
6 chapter 167 of this title designating the waters as outstanding resource waters
7 if ~~it~~ the Secretary finds that they have exceptional natural, recreational,
8 cultural, or scenic values. Designation as outstanding resource waters shall not
9 invalidate the terms of existing permits issued by the state or federal
10 government.

11 Sec. 7. 10 V.S.A. § 1253(c) is amended to read:

12 (c) ~~On its own motion, or on receipt of a written request that the secretary~~
13 ~~adopt, amend, or repeal a reclassification rule, the secretary shall comply with~~
14 ~~3 V.S.A. § 806 and may initiate a rulemaking proceeding to reclassify all or~~
15 ~~any portion of the affected waters~~ The Secretary may hold a public meeting on
16 the question of whether particular waters should be classified or reclassified in
17 the public interest. In the course of this proceeding, the secretary shall comply
18 with the provisions of 3 V.S.A. chapter 25, and may hold a public hearing
19 ~~convenient to the waters in question.~~ On receipt of a signed written request, or
20 on the Secretary's own motion, the Secretary shall consider issuing a resource
21 determination under chapter 167 of this title regarding surface water
22 classification. Any public meeting shall be held convenient to the waters in

1 ~~question, or in a county where the waters are located.~~ If the ~~secretary~~
2 Secretary finds that the established classification is contrary to the public
3 interest and that reclassification is in the public interest, he or she shall file a
4 final proposal of reclassification ~~in accordance with 3 V.S.A. § 841.~~ If the
5 ~~secretary~~ Secretary finds that it is in the public interest to change the
6 classification of any pond, lake, or reservoir designated as ~~Class A~~ Class A(2)
7 waters by subsection (a) of this section, the ~~secretary~~ Secretary shall so advise
8 and consult with the ~~department of health~~ Department of Health and shall
9 provide in its reclassification ~~rule~~ determination a reasonable period of time
10 before the ~~rule~~ determination becomes effective. During that time, any
11 municipalities or persons whose water supply is affected shall construct
12 filtration and disinfection facilities or convert to a new source of water supply.

13 Sec. 8. 29 V.S.A. § 410 is amended to read:

14 § 410. RULEMAKING; ENCROACHMENTS ON PUBLIC WATERS

15 The ~~department~~ Department may adopt rules and issue resource
16 determinations under chapter 167 of this title to implement the requirements of
17 this chapter, including issuing resource determinations of the mean water level
18 of any lake or pond which is a public water of the State.

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

20 (a) This chapter shall govern all appeals of an act or decision of the
21 ~~secretary~~ Secretary, excluding enforcement actions under chapters 201 and 211

1 of this title and rulemaking, under the following authorities and under the rules
2 adopted under those authorities:

3 (1) The following provisions of this title:

4 * * *

5 (E) chapter 47 (water pollution control).

6 * * *

7 (O) chapter 37 (wetlands protection and water resources
8 management).

9 * * *

10 (S) chapter 49 (protection of navigable waters and shorelands).

11 (T) chapter 167 (resource determinations).

12 (2) 29 V.S.A. chapter 11 (management of lakes and ponds).

13 (3) 24 V.S.A. chapter 61, subchapter 10 (relating to salvage yards).

14 Sec. 10. EFFECTIVE DATES

15 This act shall take effect on January 1, 2014, except that 10 V.S.A. § 7506
16 shall take effect on passage.