

1 S.224

2 Introduced by Senator Snelling

3 Referred to Committee on

4 Date:

5 Subject: Conservation and development; water resources; shorelands

6 Statement of purpose of bill as introduced: This bill proposes to require an Act
7 250 permit prior to the construction of a new structure, the expansion of an
8 existing structure, and certain clearing of vegetation within the shorelands of
9 lakes. For projects requiring an Act 250 permit solely for construction or
10 clearing within a lake shoreland only the Act 250 criteria for water pollution,
11 soil erosion, scenic beauty, aesthetics, and natural areas would need to be met
12 by a permit applicant.

13 An act relating to the shorelands of the lakes of the State

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

15 Sec. 1. FINDINGS

16 The General Assembly finds that:

17 (1) The shorelands of the State are among its most valuable and fragile
18 natural resources. The protection of shorelands is essential.

19 (2) A U.S. Environmental Protection Agency report, the 2010 *National*
20 *Lakes Assessment*, concluded that 82 percent of lake shorelands in Vermont are

1 in poor or fair condition because of excessive disturbance such as clearing or
2 development.

3 (3) When natural vegetation or woodland surrounding a lake is removed
4 and replaced by lawns and impervious surfaces, shores erode and phosphorus
5 pollution and sediment pollution to the lake increase.

6 (4) There is strong evidence that cleared shoreland on a lake contributes
7 to the degradation of the fish and wildlife habitat of a lake and to making the
8 lake more vulnerable to water quality problems such as algae blooms.

9 (5) Scientific studies concluded that naturally vegetated shores protect
10 lake water quality, ecology, and bank stability.

11 (6) Naturally vegetated shorelands also promote recreation and tourism,
12 provide pollution filtration, provide habitat for fish and other aquatic species,
13 prevent problem plant growth, and greatly contribute to the economy.

14 (7) The current shoreland management approach in Vermont of
15 education, outreach, technical assistance, and voluntary municipal participation
16 is not adequately protecting Vermont's lakes and the State lacks the necessary
17 authority to address the issue.

18 (8) To protect the State's lakes and to allow for continued use and
19 development of lake shorelands, the State should require certain development
20 within a protected zone around a lake to meet specified natural resources
21 criteria under Act 250, thereby ensuring regional control of lake shoreland

1 development while also providing for improved regulation of shoreland
2 activities to improve water quality and aquatic and wildlife habitat.

3 Sec. 2. 10 V.S.A. §§ 6001f and 6001g are added to read:

4 § 6001f. CONSTRUCTION OF STRUCTURES OR CLEARED AREA IN
5 LAKE SHORELANDS

6 (a) Definitions. As used in this section:

7 (1) “Accessory structure” means a structure that is incidental or
8 subordinate to a principal structure.

9 (2) “Cleared area” means an area where vegetation is permanently
10 removed.

11 (3) “Driveway” means a motor vehicle access from a private road or
12 highway, as that term is defined in 19 V.S.A. § 1, to a lot where a structure or
13 structures are located. “Driveway” shall not mean a private road.

14 (4) “Expansion” means an increase or addition to a structure or an
15 increase to cleared area.

16 (5) “Lake” means a body of standing water, including a pond or a
17 reservoir, which may have natural or artificial water level control. Private
18 ponds shall not be considered lakes.

19 (6) “Mean water level” means the mean water level of a lake as defined
20 in the Mean Water Level Rules of the Agency of Natural Resources adopted
21 under 29 V.S.A. § 410.

1 (7) “Private pond” means a body of standing water that is a natural
2 water body of not more than 20 acres located on property owned by one person
3 or an artificial water body of any size located on property owned by one
4 person. A “private pond” shall include a reservoir specifically constructed for
5 one of the following purposes: snowmaking storage, golf course irrigation,
6 stormwater management, or fire suppression.

7 (8) “Private road” means a road or street other than a highway, as that
8 term is defined in 19 V.S.A. § 1(12), that is owned by one or more persons and
9 that is used as a means of travel from a highway to more than one parcel of
10 land.

11 (9) “Protected shoreland zone” means the land area located within 250
12 feet, horizontal distance, of the mean water level of a lake.

13 (10) “Structure” means any assembly of materials built for the support,
14 shelter, or enclosure of persons, animals, goods, or property, including a
15 dwelling, a commercial or industrial building, and driveways, decks, and patios
16 attached or appurtenant to a dwelling or commercial or industrial building.

17 (11) “Vegetation” means all live trees, shrubs, and other plants.
18 Vegetation does not mean grass.

19 (b) In addition to other applicable law, the following activities shall be
20 development under this chapter, independent of the acreage of the tract of land
21 on which the activity occurs:

1 (1) construction of a new structure within the protected shoreland zone;
2 (2) expansion of an existing structure, as measured in floor area, within
3 the protected shoreland zone of 30 percent or more, during the lifetime of the
4 structure, provided that any expansion of an existing structure shall be away
5 from the mean water level of a lake;

6 (3) creation or expansion of cleared area that results in:

7 (A) clearing 25 percent or more of the area of a lot within the
8 protected shoreland area; or

9 (B) clearing more than 15 percent of the area of a lot that is within
10 75 feet of the mean water level of a lake.

11 (c) Permit criteria.

12 (1) If construction, creation, or expansion of a structure or cleared area
13 is development under this chapter solely by application of subsection (b) of
14 this section, the criteria for obtaining a permit shall be:

15 (A) subdivisions 6086(a)(1)(A), (D), (F), and (G) of this title
16 regarding undue water pollution;

17 (B) subdivision 6086(a)(4) of this title regarding soil erosion;

18 (C) subdivision 6086(a)(8) of this title regarding the scenic or natural
19 beauty of the area, aesthetics, historic sites, or rare and irreplaceable natural
20 areas; and

21 (D) the shoreland standards under subsection (g) of this section.

1 (2) If construction, creation, or expansion of a structure or cleared area
2 in a protected shoreland zone is development under subdivision 6001(3) of this
3 title, the applicant shall meet the criteria for obtaining a permit for any other
4 development and the shoreland standards in subsection (g) of this section.

5 (d) Permit procedure. The procedure for obtaining the permit required
6 under this section shall be the same as for any other development under this
7 chapter.

8 (e) Applicability. Notwithstanding the exemptions provided for under
9 subdivision 6001(3)(D) or subsection 6081(c) of this title, the requirements of
10 this section shall apply to the following:

11 (1) farming;

12 (2) logging or timber harvesting;

13 (3) the construction of improvements for an electric generation or
14 transmission facility that requires a certificate of public good under 30 V.S.A.
15 § 248, a natural gas facility as defined in 30 V.S.A. § 248(a)(3), or a
16 telecommunications facility issued a certificate of public good under 30 V.S.A.
17 § 248a;

18 (4) the construction of improvements for agricultural fairs; and

19 (5) the construction or siting of a solid waste facility.

1 (f) Exemptions.

2 (1) The following shall be exempt from the requirements of subsection
3 (b) of this section provided that no other action is taken or caused to be taken
4 after January 1, 2015 for which a permit would be required under this chapter
5 or the rules adopted under this chapter:

6 (A) all structures in a protected shoreland zone that were
7 substantially completed prior to January 1, 2015;

8 (B) construction of a structure for which a complete application for
9 all applicable local, State, and federal permits has been submitted on or before
10 January 1, 2015, provided that the applicant does not subsequently file an
11 application for a permit amendment that would require a permit under this
12 chapter and that substantial construction of the structure commences within
13 two years of the date on which all applicable local, State, and federal permits
14 become final;

15 (C) construction of accessory structures that serve a structure in a
16 protected shoreland zone that was substantially completed prior to January 1,
17 2015, provided that the accessory structure does not exceed 400 square feet,
18 measured in floor area;

19 (D) Cleared area within a protected shoreland zone cleared prior to
20 January 1, 2015.

1 (2) The following activities shall be allowed in a protected shoreland
2 zone and do not require a permit under this section:

3 (A) the transfer of ownership of a property that does not conform to
4 the standards set forth in subsection (g) of this section;

5 (B) routine maintenance and repair of structures within the protected
6 shoreland area, provided that repairs that do not involve the expansion of a
7 structure by more than 30 percent of the floor area;

8 (C) any change required by applicable federal, State, or local building
9 or safety law; and

10 (D) reconstruction or replacement of a structure that is destroyed or
11 damaged, provided that a structure shall not be reconstructed or replaced in a
12 manner that increases its lack of conformity with the standards set forth in
13 subsection (g) of this section or the rules adopted under this section.

14 (g) Shoreland standards. In addition to the shoreline criteria specified
15 under subdivision 6086(a)(1)(F), development subject to this chapter solely by
16 reason of this section shall comply with the following standards:

17 (1) Except to allow for the construction or completion of permitted uses,
18 a buffer strip of vegetation that meets the requirements of section 6001g of this
19 title shall be preserved within an area of 75 feet from the mean water level of a
20 lake, provided that a footpath not to exceed six feet in width is allowed within
21 the vegetated buffer to allow access to the mean water level of a lake.

1 (2) All new structures and accessory structures shall be set back at least
2 75 feet, horizontal distance, from the mean water level of a lake, except that
3 this requirement shall not apply to:

4 (A) structures that require direct access to a lake as an operational
5 necessity, such as piers, docks, and retaining walls permitted by the Agency of
6 Natural Resources under 29 V.S.A. chapter 11; and

7 (B) new driveways if no other reasonable alternative exists; the
8 driveway is set back not less than 50 feet, horizontal distance, from the mean
9 water level of a lake; and the applicant demonstrates that appropriate
10 techniques shall be used to prevent sedimentation of the lake from the
11 driveway.

12 (3) All new structures shall be designed to minimize stormwater runoff
13 from the site that exceeds the natural predevelopment conditions. Where
14 possible, existing natural runoff control features shall be retained in order to
15 reduce runoff and encourage stormwater infiltration.

16 (4) During construction of a structure or clearing of vegetation in the
17 protected shoreland area that is allowed or permitted under this section, any
18 exposed ground shall be temporarily or permanently stabilized within one
19 week from the time it was last actively worked, by use of riprap, sod, seed, and
20 mulch, or other effective measures. In all cases, permanent stabilization shall
21 occur within nine months of the initial date of exposure.

1 (5) The clearing or removal of vegetation in order to install a new
2 wastewater system permitted under chapter 64 of this title shall not extend
3 closer than 75 feet to the mean water level of a lake, unless the wastewater
4 system is a replacement system for a structure in the protected shoreland zone
5 that was substantially completed prior to January 1, 2015 or that is being
6 replaced or reconstructed as allowed under subdivision (f)(2)(C) of this
7 section.

8 (h) Rulemaking. The Board shall adopt rules to:

9 (1) authorize additional allowed uses that do not negatively impact
10 water quality within a protected shoreland zone or within the vegetated buffer
11 of the protected shoreland zone.

12 (2) further specify the control measures required for permitted or
13 allowed activities in the protected shoreland zone that involve filling, grading,
14 excavation, or other similar activities that result in unstable soil conditions; and

15 (3) specify other functionally water-dependent structures or uses that
16 shall not be required to comply with the setback requirement in subsection (e)
17 of this section.

1 § 6001g. VEGETATION MANAGEMENT OF LAKE SHORELAND

2 BUFFERS

3 (a) Within the vegetated buffer strip required under subdivision 6001f(g)(1)
4 of this title, selective cutting of trees is allowed provided that a well-distributed
5 stand of trees and other natural vegetation is maintained.

6 (b) A “well-distributed stand of trees adjacent to a lake” shall be defined as
7 maintaining a minimum rating score of 16 in each 25-foot by 50-foot
8 rectangular area in the buffer strip as determined by the following rating
9 system.

10 <u>(1) Diameter of tree at 4-1/2 feet above</u>	<u>Points</u>
11 <u>ground level (inches)</u>	
12 <u>2-< 4 in.</u>	<u>1</u>
13 <u>4-< 8 in.</u>	<u>2</u>
14 <u>8-< 12 in.</u>	<u>4</u>
15 <u>12 in. or greater</u>	<u>8</u>

16 (2) The following shall govern in applying this point system:

17 (A) 25-foot by 50-foot rectangular plots shall be established within a
18 vegetated buffer where a property owner or lessee proposes clearing within the
19 buffer.

20 (B) Each successive plot must be adjacent to but not overlap a
21 previous plot.

1 (C) Any plot not containing the required points must have no
2 vegetation removed except as otherwise allowed by rules adopted under this
3 section.

4 (D) Any plot containing the required points may have vegetation
5 removed down to the minimum points required or as otherwise allowed by
6 rules adopted under this chapter.

7 (E) Where conditions permit, no more than 50 percent of the points
8 on any 25-foot by 50-foot rectangular area may consist of trees greater than
9 12 inches in diameter.

10 (F) No more than 40 percent of the total volume of trees four inches
11 or more in diameter, measured at four and one-half feet above ground level,
12 may be removed in any 10-year period.

13 (G) Existing vegetation under three feet in height and other ground
14 cover, including leaf litter and the forest duff layer, shall not be cut, covered,
15 or removed, except to provide for a footpath or other permitted uses.

16 (H) Pruning of tree branches on the bottom one-third of the tree is
17 allowed.

18 (c) As used in this section, “other natural vegetation” means retaining
19 existing vegetation under three feet in height and other ground cover and
20 retaining at least five saplings less than two inches in diameter at four and
21 one-half feet above ground level for each 25-foot by 50-foot rectangle area. If

1 five saplings do not exist, no woody stems less than two inches in diameter can
2 be removed until five saplings have been planted or rooted in the plot.

3 Sec. 3. 10 V.S.A. § 6083a(a) is amended to read:

4 (a) All applicants for a land use permit under section 6086 of this title shall
5 be directly responsible for the costs involved in the publication of notice in a
6 newspaper of general circulation in the area of the proposed development or
7 subdivision and the costs incurred in recording any permit or permit
8 amendment in the land records. In addition, applicants shall be subject to the
9 following fees for the purpose of compensating the State of Vermont for the
10 direct and indirect costs incurred with respect to the administration of the Act
11 250 program:

12 (1) For projects involving construction, \$5.40 for each \$1,000.00 of the
13 first \$15,000,000.00 of construction costs, and \$2.50 for each \$1,000.00 of
14 construction costs above \$15,000,000.00.

15 (2) For projects involving the creation of lots, \$100.00 for each lot.

16 * * *

17 (6) In no event shall a permit application fee exceed \$150,000.00.

18 (7) For projects requiring a permit under this chapter solely by reason of
19 section 6001f of this title, \$150.00.

20 Sec. 4. EFFECTIVE DATE

21 This act shall take effect on passage.