

**No. 4. An act relating to permitting planting projects in flood hazard areas.**

(H.53)

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

Sec. 1. 24 V.S.A. § 4424 is amended to read:

§ 4424. SHORELANDS; RIVER CORRIDOR PROTECTION AREAS;  
FLOOD OR HAZARD AREA; SPECIAL OR FREESTANDING  
BYLAWS.

(a) Bylaws; flood and other hazard areas; river corridor protection. Any municipality may adopt freestanding bylaws under this chapter to address particular hazard areas in conformance with the municipal plan or, for the purpose of adoption of a flood hazard area bylaw, a local hazard mitigation plan approved under 44 C.F.R. § 201.6. Such freestanding bylaws may include the following, which may also be part of zoning or unified development bylaws:

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

(2) Bylaws to regulate development and use in flood areas, river corridor protection areas, or other hazard areas. The following shall apply if flood or other hazard area bylaws are enacted:

(A) Purposes.

(i) To minimize and prevent the loss of life and property, the disruption of commerce, the impairment of the tax base, and the extraordinary public expenditures and demands on public service that result from flooding,

landslides, erosion hazards, earthquakes, and other natural or human-made hazards.

(ii) To ensure that the design and construction of development in flood, river corridor protection, and other hazard areas are accomplished in a manner that minimizes or eliminates the potential for flood and loss or damage to life and property in a flood hazard area or that minimizes the potential for fluvial erosion and loss or damage to life and property in a river corridor protection area.

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

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

(B) Contents of bylaws. ~~Flood~~ Except as provided in subsection (c) of this section, flood, river corridor protection area, and other hazard area bylaws may:

(i) Contain standards and criteria that prohibit the placement of damaging obstructions or structures, the use and storage of hazardous or radioactive materials, and practices that are known to further exacerbate hazardous or unstable natural conditions.

(ii) Require flood, fluvial erosion, and hazard protection through elevation, floodproofing, disaster preparedness, hazard mitigation, relocation, or other techniques.

(iii) Require adequate provisions for flood drainage and other emergency measures.

(iv) Require provision of adequate and disaster-resistant water and wastewater facilities.

(v) Establish other restrictions to promote the sound management and use of designated flood, river corridor protection, and other hazard areas.

(vi) Regulate all land development in a flood hazard area, river corridor protection area, or other hazard area, except for development that is regulated under 10 V.S.A. § 754.

(C) Effect on zoning bylaws. Flood or other hazard area bylaws may alter the uses otherwise permitted, prohibited, or conditional in a flood or other hazard area under a bylaw, as well as the applicability of other provisions of that bylaw. Where a flood hazard bylaw, a hazard area bylaw, or both apply along with any other bylaw, compliance with the flood or other hazard area bylaw shall be prerequisite to the granting of a zoning permit. Where a flood hazard area bylaw or a hazard area bylaw but not a zoning bylaw applies, the flood hazard and other hazard area bylaw shall be administered in the same manner as are zoning bylaws, and a flood hazard area or hazard area permit shall be required for land development covered under the bylaw.

(D)(i) Mandatory provisions. ~~All~~ Except as provided in subsection (c) of this section, all flood and other hazard area bylaws shall provide that no permit for new construction or substantial improvement shall be granted for a flood or other hazard area until after both the following:

(I) A copy of the application is mailed or delivered by the administrative officer or by the appropriate municipal panel to the Agency of Natural Resources or its designee.

(II) Either 30 days have elapsed following the mailing or the Agency or its designee delivers comments on the application.

(ii) The Agency of Natural Resources may delegate to a qualified representative of a municipality with a flood hazard area bylaw or ordinance or to a qualified representative for a regional planning commission the Agency's authority under this subdivision (a)(2)(D) to review and provide technical comments on a proposed permit for new construction or substantial improvement in a flood hazard area. Comments provided by a representative delegated under this subdivision (a)(2)(D) shall not be binding on a municipality.

(b) Ordinances. A municipality may adopt a flood hazard area, river corridor protection area, or other hazard area regulation that meets the requirements of this section by ordinance under subdivision 2291(25) of this title.

(c) Permit; planting projects.

(1) As used in this subsection, “planting project” means planting vegetation to restore natural and beneficial floodplain functions, as defined in 42 U.S.C. § 4121(a), that include floodwater storage, water quality improvement, and supporting riparian and aquatic habitat.

(2) By operation of this subsection, a planting project in a flood or other hazard area or river corridor protection area is considered to have a permit under this chapter unless the project is:

(A) part of a larger undertaking that includes the construction or installation of structures, the creation of earthen berms or banks, or physical disturbance of land or water other than necessary for planting vegetation; or

(B) a forestry operation or part of a forestry operation as defined in 10 V.S.A. § 2602 and exempt from municipal regulation under subsection 4413(d) of this title.

(3) Notwithstanding any contrary provision of this chapter or municipal bylaw or ordinance, a planting project considered to have a permit by operation of this subsection shall not be required to file an application to obtain a permit under this chapter or approval under a municipal ordinance or to obtain the issuance of such a permit or approval by the municipality.

Sec. 2. 24 V.S.A. § 4412 is amended to read:

§ 4412. REQUIRED PROVISIONS AND PROHIBITED EFFECTS

Notwithstanding any existing bylaw, the following land development provisions shall apply in every municipality:

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(10) Planting projects; flood hazard and similar areas. A bylaw under this chapter shall not require the filing of an application or the issuance of a permit by the municipality for a planting project considered to have a permit by operation of subsection 4424(c) of this title.

Sec. 3. 24 V.S.A. § 2291 is amended to read:

§ 2291. ENUMERATION OF POWERS

For the purpose of promoting the public health, safety, welfare, and convenience, a town, city, or incorporated village shall have the following powers:

\* \* \*

(25) To regulate by means of an ordinance or bylaw development in a flood hazard area, river corridor protection area, or other hazard area consistent with the requirements of section 4424 of this title and the National Flood Insurance Program. Such an ordinance or bylaw may regulate accessory dwelling units in flood hazard and fluvial erosion areas. However, such an ordinance or bylaw shall not require the filing of an application or the issuance

of a permit or other approval by the municipality for a planting project  
considered to have a permit by operation of subsection 4424(c) of this title.

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Sec. 4. EFFECTIVE DATE

This act shall take effect on passage.

Date Governor signed bill: March 6, 2017