

1 H.53

2 Introduced by Representative Deen of Westminster

3 Referred to Committee on

4 Date:

5 Subject: Conservation and development; municipal planning and development;
6 local bylaws and ordinances; flood hazard areas; planting

7 Statement of purpose of bill as introduced: This bill proposes to grant a permit
8 by operation of statute for planting projects in flood hazard areas and other
9 areas for the purpose of supporting natural and beneficial floodplain functions.

10 An act relating to permitting planting projects in flood hazard areas

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

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

13 § 4424. SHORELANDS; RIVER CORRIDOR PROTECTION AREAS;

14 FLOOD OR HAZARD AREA; SPECIAL OR FREESTANDING

15 BYLAWS.

16 (a) Bylaws; flood and other hazard areas; river corridor protection. Any
17 municipality may adopt freestanding bylaws under this chapter to address
18 particular hazard areas in conformance with the municipal plan or, for the
19 purpose of adoption of a flood hazard area bylaw, a local hazard mitigation
20 plan approved under 44 C.F.R. § 201.6. Such freestanding bylaws may include

1 the following, which may also be part of zoning or unified development
2 bylaws:

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

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

7 (A) Purposes.

8 (i) To minimize and prevent the loss of life and property, the
9 disruption of commerce, the impairment of the tax base, and the extraordinary
10 public expenditures and demands on public service that result from flooding,
11 landslides, erosion hazards, earthquakes, and other natural or human-made
12 hazards.

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

19 (iii) To manage all flood hazard areas designated pursuant to
20 10 V.S.A. § 753.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 (c) Permit; planting projects.

16 (1) As used in this subsection, "planting project" means planting
17 vegetation to restore natural and beneficial floodplain functions, as defined in
18 42 U.S.C. § 4121(a), that include floodwater storage, water quality
19 improvement, and supporting riparian and aquatic habitat.

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

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

4 § 2291. ENUMERATION OF POWERS

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

8 * * *

9 (25) To regulate by means of an ordinance or bylaw development in a
10 flood hazard area, river corridor protection area, or other hazard area consistent
11 with the requirements of section 4424 of this title and the National Flood
12 Insurance Program. Such an ordinance or bylaw may regulate accessory
13 dwelling units in flood hazard and fluvial erosion areas. However, such an
14 ordinance or bylaw shall not require the filing of an application or the issuance
15 of a permit or other approval by the municipality for a planting project
16 considered to have a permit by operation of subsection 4424(c) of this title.

17 * * *

18 Sec. 4. EFFECTIVE DATE

19 This act shall take effect on passage.