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H.53

Introduced by Representative Deen of Westminster

Referred to Committee on

Date:

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

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

An act relating to permitting planting projects in flood hazard areas

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

1 plan approved under 44 C.F.R. § 201.6. Such freestanding bylaws may  
2 include the following, which may also be part of zoning or unified  
3 development bylaws:

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

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

8 (A) Purposes.

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

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

20 (iii) To manage all flood hazard areas designated pursuant to  
21 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.

20                   (vi) Regulate all land development in a flood hazard area, river  
21 corridor protection area, or other hazard area, except for development that is

1 regulated under 10 V.S.A. § 754.

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

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

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

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

21 (ii) The Agency of Natural Resources may delegate to a qualified

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

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

12 (c) Permit; planting projects.

13 (1) As used in this subsection, "planting project" means planting  
14 vegetation to restore natural and beneficial floodplain functions, as defined in  
15 42 U.S.C. § 4121(a), that include floodwater storage, water quality  
16 improvement, and supporting riparian and aquatic habitat.

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

20 (A) part of a larger undertaking that includes the construction or  
21 installation of structures, the creation of earthen berms or banks, or physical

1 disturbance of land or water other than necessary for planting vegetation; or

2 (B) a forestry operation or part of a forestry operation as defined in  
3 10 V.S.A. § 2602 and exempt from municipal regulation under subsection  
4 4413(d) of this title.

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

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

11 § 4412. REQUIRED PROVISIONS AND PROHIBITED EFFECTS

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

14 \* \* \*

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

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

20 § 2291. ENUMERATION OF POWERS

21 For the purpose of promoting the public health, safety, welfare, and

1 convenience, a town, city, or incorporated village shall have the following  
2 powers:

3 \* \* \*

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

12 \* \* \*

13 Sec. 4. EFFECTIVE DATE

14 This act shall take effect on passage.