

1 H.591

2 Introduced by Representatives Deen of Westminster and Mrowicki of Putney

3 Referred to Committee on

4 Date:

5 Subject: Fish and wildlife; fishing access areas; secondary uses

6 Statement of purpose of bill as introduced: This bill proposes to allow a
7 person to use a fishing access area for an authorized secondary use, provided
8 that the secondary use does not interfere with a primary use of the fishing
9 access area. The bill would also provide that the Department of Fish and
10 Wildlife shall be the only law enforcement agency with the authority to
11 enforce the requirements for fishing access areas. The Department would be
12 authorized to initiate enforcement of the requirements for fishing access areas
13 only on receipt of a complaint that an authorized secondary use interferes with
14 a primary use of an access area. In addition, the bill repeals the Fish and
15 Wildlife Board rule regulating fishing access areas.

16 An act relating to fishing access areas

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

18 Sec. 1. FINDINGS

19 Findings. The General Assembly finds that:

1 (1) Under the Dingell-Johnson Sport Fish Restoration Act (Dingell-
2 Johnson), codified at 16 U.S.C. §§ 777-777n, except §§ 777e-1 and 777g-1,
3 and the Pittman-Robertson Wildlife Restoration Act (Pittman-Robertson),
4 16 U.S.C. §§ 669-669k, the U.S. Fish and Wildlife Service provides states with
5 grants to fund approved projects, including the construction or development of
6 areas that allow boats to access state waters.

7 (2) The funding for the boating access grants provided under Dingell-
8 Johnson and Pittman-Robertson is derived from excise taxes on sport fishing
9 tackle, sporting arms, ammunition, and other goods.

10 (3) Uses related to the goods subject to the excise taxes are generally
11 identified as the authorized purposes of the funds granted to states and,
12 consequently, the uses are provided with a priority for the use of state boating
13 access areas funded under Dingell-Johnson and Pittman-Robertson.

14 (4) Priority uses of boating access areas funded under Dingell-Johnson
15 and Pittman-Robertson are not the only uses allowed at these federally funded
16 boating access areas. Federal law, 50 C.F.R. § 80.134, allows commercial,
17 recreational, and other secondary uses of boating access areas funded under
18 Dingell-Johnson and Pittman-Robertson, provided that the secondary uses do
19 not interfere with an authorized purpose of a federal grant.

20 (5) The Fish and Wildlife Board rule entitled Use of State Controlled
21 Fishing Access Areas, 10 App. V.S.A. § 115, prohibits almost all secondary

1 uses of federally funded boating access areas in Vermont, thereby
2 unnecessarily limiting or prohibiting the use of these State-owned lands by
3 many Vermont citizens.

4 (6) The Department of Fish and Wildlife, which is funded in part
5 through taxes on all citizens of the State, strictly enforces the prohibition on
6 secondary uses of boating access areas, including requiring secondary users to
7 leave otherwise empty State-owned access areas.

8 (7) Under the Vermont Constitution, State statute, and common law, the
9 fish, wildlife, and waters of Vermont are held in trust by the State for the
10 benefit of the citizens of Vermont, and the Commissioner of Fish and Wildlife
11 is charged by statute with safeguarding the fish and wildlife of the State for all
12 of its citizens.

13 (8) To allow all of the citizens of the State access to the public trust fish,
14 wildlife, and waters of the State, secondary uses of boating access areas should
15 be allowed in a manner consistent with the requirements of Dingell-Johnson
16 and Pittman-Robertson.

17 (9) Authorizing secondary uses of boating access areas will increase the
18 number of persons who are exposed to or use the State's natural resources,
19 which will help build the public policy support necessary for protecting
20 Vermont's natural resources.

1 Sec. 2. 10 V.S.A. § 4145a is added to read:

2 § 4145a. USE OF FISHING ACCESS AREAS

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

4 (1) “Authorized secondary use” means all uses of an access area that are
5 not primary uses, provided that the following shall not be an “authorized
6 secondary use”:

7 (A) Discarding solid waste, mandated recyclables, or food residuals,
8 as those terms are defined in chapter 159 of this title, except where solid waste
9 receptacles or recycling containers are provided.

10 (B) Discarding of dead fish, dead wildlife, or portions thereof.

11 (C) Washing or cleaning of vehicles and equipment, except for the
12 purpose of removing aquatic nuisance species as required under chapter 50 of
13 this title.

14 (D) Making or maintaining a fire of any kind.

15 (E) Parking of motor vehicles or trailers, or both, while the motor
16 vehicle owner or user is not present at the fishing access area or on the adjacent
17 public waters, except when permitted by the Commissioner.

18 (F) Water withdrawal, except for withdrawal by a fire department
19 operating a dry hydrant in accordance with the terms of a memorandum of
20 agreement (MOA) with the Commissioner.

1 (G) Swimming or waterskiing within 150 feet of a fishing access
2 area.

3 (H) Parking in excess of 72 consecutive hours if the parking
4 interferes with a primary use of the fishing access area.

5 (I) Discharging a firearm within 150 feet of a fishing access area.

6 (J) Selling or offering to sell goods of any kind.

7 (K) Conducting a business or commercial activity, except for the
8 provision of commercial guiding services from motorized and nonmotorized
9 vessels consistent with the primary uses of a fishing access area.

10 (L) Storage of motor vehicles or trailers, or both, or placing of
11 vehicles or trailers for sale.

12 (2) "Camping" means any activity using a tent, camper, or motor home;
13 any activity involving preparation of an area for sleeping; or any overnight
14 sleeping.

15 (3) "Commissioner" means the Commissioner of Fish and Wildlife.

16 (4) "Department" means the Department of Fish and Wildlife.

17 (5) "Fishing access area" means property owned or managed by the
18 Department that was funded, in whole or in part, under the Dingell-Johnson
19 Sport Fish Restoration Act, codified at 16 U.S.C. §§ 777-777n, except
20 §§ 777e-1 and 777g-1, or the Pittman-Robertson Wildlife Restoration Act,
21 16 U.S.C. §§ 669-669k.

1 (6) “Motorboat” means any vessel propelled by machinery, whether or
2 not such machinery is the principal source of propulsion.

3 (7) “Motor vehicle” means all vehicles propelled or drawn by power
4 other than muscular power.

5 (8) “Parking” means the leaving of motor vehicles or trailers unattended
6 in a fishing access area.

7 (9) “Primary use” means the use of a fishing access area consistent with
8 the authorized purposes of a federal grant to the Department. The following
9 uses, in order of priority, are primary uses:

10 (A) Angling, ice fishing, and the launching of any vessel to be used
11 for fishing and the parking of motor vehicles and trailers necessary for and
12 contemporaneous with these purposes.

13 (B) The launching of inboard and outboard motorboats engaging in
14 any activity and the parking of motor vehicles and trailers necessary for and
15 contemporaneous with that purpose.

16 (C) Trapping, hunting, and the parking of motor vehicles and boat
17 trailers necessary for and contemporaneous with these purposes.

18 (D) The launching of all nonmotorized vessels and the parking of
19 vehicles and boat trailers necessary for and contemporaneous with that
20 purpose. Users shall launch from the designated nonmotorized launch site,
21 when such a site is identified.

1 (E) The use of all-terrain vehicles and snowmobiles solely for the
2 purposes of ice fishing.

3 (F) Special uses permitted by the Commissioner.

4 (10) "Vessel" means every description of watercraft used or capable of
5 being used as a means of transportation on water, including iceboats.

6 (b) Use of fishing access area; priority of use.

7 (1) A fishing access area may be used for one or more of the following
8 uses:

9 (A) a primary use; or

10 (B) an authorized secondary use.

11 (2) An authorized secondary use shall not interfere with a primary use of
12 a fishing access area.

13 (3) When an authorized secondary use interferes with a primary use, the
14 Department first shall attempt to eliminate or reconcile the interference so that
15 all uses of the fishing access area may continue. If the interference cannot be
16 eliminated or reconciled, the Department shall inform the person engaged in
17 the authorized secondary use of the priority of uses of the fishing access area.

18 (4) If an authorized secondary use interferes with a primary use by
19 causing a lack of parking, the Department shall request that the person engaged
20 in the authorized secondary use find alternative parking and shall inform that
21 person that he or she may otherwise continue to use the fishing access area.

1 (c) Special use.

2 (1) The Commissioner through issuance of a special use permit may
3 authorize use of a fishing access area for a use that is not a primary use or an
4 authorized secondary use if the Commissioner determines that the proposed
5 use will not interfere with a primary use.

6 (2) The Commissioner through issuance of a special use permit may
7 authorize the use of a fishing access area by an educational institution or a
8 nonprofit charitable organization conducting a fundraising event of limited
9 duration if the Commissioner determines that the event will not conflict with a
10 primary use of the access area.

11 (3) The Commissioner shall not issue a special use permit for a use that
12 interferes with a primary use of a fishing access area.

13 (d) Enforcement.

14 (1) The Department shall be the only law enforcement agency with the
15 authority to enforce the requirements of this section.

16 (2) The Department may initiate enforcement of the requirements of this
17 section only after receipt of a complaint that an authorized secondary use or
18 other use interferes with a primary use of an access area.

1 Sec. 3. 10 V.S.A. § 4145 is amended to read:

2 § 4145. ~~ACCESS, LANDING AREA RULES~~ DEPARTMENT LAND OR
3 WATERS; ACQUIRED OR MAINTAINED

4 (a) ~~The~~ Except as provided for under section 4145a of this title, the Board
5 may adopt rules, under 3 V.S.A. chapter 25, to regulate the use by the public of
6 access areas, landing areas, parking areas, or ~~of~~ other lands or waters acquired
7 or maintained pursuant to section 4144 of this title. Such rules shall be posted
8 in the areas affected and shall permit the launching of all vessels that have a
9 Vermont registration certificate required by 23 V.S.A. chapter 29 and the
10 parking of vehicles and boat trailers used by these vessels. The rules shall not
11 preclude the authorization to launch vessels not registered in Vermont. ~~These~~
12 ~~rules also shall permit the launching of all nonmotorized vessels not used for~~
13 ~~commercial purposes and the parking of vehicles and boat trailers used by~~
14 ~~these vessels.~~

15 (b) The Commissioner may enter into agreements with owners of land,
16 which shall not involve payment to the landowner, in order to allow public
17 access for launching of nonmotorized vessels in public waters. The
18 Commissioner may agree to upgrade the land area in a minor way; for
19 example, the Commissioner may agree to build a footpath to the water, build
20 and maintain a small parking area, or perform minor grading to improve boat
21 access. The Commissioner ~~may~~ shall not agree to major upgrading, such as

1 building a launching ramp or paving a parking area. A landowner who enters
2 into an agreement under this subsection shall be afforded the landowner
3 liability protections of 12 V.S.A. § 5793. The Commissioner shall post signs
4 in these areas, inviting private contributions to the Fish and Wildlife Fund for
5 the purpose of building and maintaining nonmotorized vessel access areas, and
6 shall issue to any person contributing, a sticker that may be placed on a vessel
7 and that identifies the person as a contributor to the nonmotorized vessel
8 access area program.

9 (c) The Commissioner shall keep account of funds, including private
10 donations and State appropriations, which are deposited into the Fish and
11 Wildlife Fund for the purpose of building and maintaining access areas and
12 shall annually, on or before January 15, report to the House Committee on
13 Natural Resources, Fish, and Wildlife ~~and Water Resources~~, the Senate
14 Committee on Natural Resources and Energy, and the Senate and House
15 Committees on Appropriations, concerning the use of those funds in the past
16 year and plans for use of the funds for the coming year. The provisions of
17 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report to
18 be made under this subsection.

19 (d) The Board shall allow the Commissioner of Environmental
20 Conservation to post aquatic nuisance signs pursuant to subdivision 1453(b)(6)
21 of this title.

1 Sec. 4. 10 V.S.A. § 4572 is amended to read:

2 § 4572. DEFINITIONS

3 (a) As used in this subchapter, a minor fish and wildlife violation means:

4 (1) a violation of 10 V.S.A. § ~~4145~~ 4145a (violation of ~~access and~~
5 ~~landing area rules~~ fishing access area requirements);

6 (2) a violation of 10 V.S.A. § 4251 (taking wild animals and fish
7 without a license);

8 (3) a violation of 10 V.S.A. § 4266 (failure to carry a license on person
9 or failure to exhibit license);

10 (4) a violation of 10 V.S.A. § 4267 (false statements in license
11 application; altering license; transferring license to another person; using
12 another person's license; or guiding an unlicensed person);

13 (5) a violation of 10 V.S.A. § 4713 (tree or ground stands or blinds); or

14 (6) [Repealed.]

15 (7) a violation of a biological collection rule adopted by the Board under
16 part 4 of this title.

17 (b) "Bureau" means the Judicial Bureau as created in 4 V.S.A. § 1102.

18 Sec. 5. REPEAL; FISH AND WILDLIFE BOARD RULE; FISHING

19 ACCESS AREAS

20 The Fish and Wildlife Board rule entitled Use of State Controlled Fishing
21 Access Areas, as set forth in 10 App. V.S.A. § 115, is repealed.

1 Sec. 6. EFFECTIVE DATE

2 This act shall take effect on passage.