

1 Introduced by Committee on Agriculture

2 Date:

3 Subject: Agriculture; conservation and development; wetlands; farming;  
4 forestry

5 Statement of purpose of bill as introduced: This bill proposes to amend the  
6 regulation of wetlands in the State.

7 An act relating to the regulation of wetlands

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

9 \* \* \* Wetlands \* \* \*

10 Sec. 1. FINDINGS AND PURPOSE

11 (a) Findings. The General Assembly finds for the purposes of Secs. 1  
12 through 12 of this act that:

13 (1) Wetlands provide critical ecosystem services including flood  
14 resiliency, water quality protection, important wildlife and aquatic vegetation  
15 habitat, groundwater recharge, erosion control, and recreational opportunities.

16 (2) Alterations to wetlands may disturb their natural ability to reduce  
17 flood damage, adversely affect flood resiliency, and adversely impact public  
18 health and welfare.



1 conditions. Wetlands generally include swamps, marshes, bogs, and similar  
2 areas.

3 (6) “Class I wetland” means:

4 ~~(A) a wetland identified on the Vermont significant wetlands~~  
5 ~~inventory maps as a Class I wetland;~~

6 ~~(B) a wetland that the former Water Resources Board identified in~~  
7 ~~rules of the Board as a Class I wetland; or~~

8 ~~(C) a wetland that the Secretary, based upon an evaluation of the~~  
9 ~~extent to which the wetland serves the functions and values set forth in~~  
10 ~~subdivision 905b(18)(A) 913(b) of this title, determines is exceptional or~~  
11 ~~irreplaceable in its contribution to Vermont’s natural heritage and, therefore,~~  
12 ~~merits the highest level of protection. Class I wetlands shall be designated by~~  
13 ~~rule.~~

14 (7) “Class II wetland” means a wetland other than a Class I or Class III  
15 wetland that exhibits one or more of the following physical characteristics:

16 ~~(A) is a wetland identified on the Vermont significant wetlands~~  
17 ~~inventory maps; or The wetland is equal to or greater than 0.5 acres, or~~  
18 ~~21,780 square feet, in size.~~

19 ~~(B) the Secretary determines to merit protection, pursuant to section~~  
20 ~~914 of this title, based upon an evaluation of the extent to which it serves the~~  
21 ~~functions and values set forth in subdivision 905b(18)(A) of this title and the~~  
22 ~~rules of the Department The wetland is greater than 5,000 square feet in size~~

1 and contiguous with a stream or open body of surface water, or the wetland is  
2 within a river corridor or flood hazard area.

3 (C) The wetland is over 2,500 feet in elevation and contiguous with a  
4 stream.

5 (D) The wetland is greater than 2,000 square feet and contiguous  
6 with an impaired surface water;

7 (E) The wetland itself is an impaired surface water.

8 (F) The wetland is or contains peatland.

9 (G) The wetland is greater than 5,000 square feet in size and is a  
10 natural hillside seep.

11 (H) The wetland is a vernal pool.

12 (I) The wetland has a known occurrence of a wetland-dependent rare,  
13 threatened, or endangered species.

14 (J) The wetland has a known occurrence of a State-significant natural  
15 community.

16 (K) The wetland was determined to be Class II after October 1, 2020,  
17 and a permit was issued authorizing impacts to that wetland.

18 (8) “Class III wetland” means a wetland that is neither a Class I wetland  
19 nor a Class II wetland.

20 (9) “Buffer zone” means an area contiguous to a ~~significant~~ Class I or II  
21 wetland that protects the wetland’s functions and values. The buffer zone for a  
22 Class I wetland shall extend at least 100 feet from the border of the wetland,

1 unless the Department determines otherwise under section 915 of this title.

2 The buffer zone for a Class II wetland shall extend at least 50 feet from the  
3 border of the wetland unless the Secretary determines otherwise under section  
4 914 913 of this title.

5 (10) ~~“Panel” means the Water Resources Panel of the Agency of Natural~~  
6 ~~Resources.~~ “Agricultural production area” means an area in existence as of  
7 January 1, 2019 where animals, agricultural inputs, or raw agricultural  
8 products are confined, housed, stored, or prepared within or without structures,  
9 and includes a 200-foot buffer around such areas. Agricultural production  
10 areas include barnyards, raw materials storage areas, heavy use areas, fertilizer  
11 and pesticide storage areas, waste storage and containment areas, egg washing  
12 or egg processing facilities, or milk houses. For the purpose of this chapter,  
13 agricultural production areas do not include areas used in the storage, handling,  
14 treatment, or disposal of mortalities.

15 (11) ~~“Significant wetland” means any Class I or Class II wetland.~~

16 “Farming” means:

17 (A) the cultivation or other use of land for growing food, fiber,  
18 Christmas trees, maple sap, or horticultural and orchard crops;

19 (B) the raising, feeding, or management of livestock, poultry, fish,  
20 or bees;

21 (C) the operation of greenhouses; or

22 (D) the production of maple syrup.

1           (12) “Permanent structure” means a nonmovable structure that is  
2           designed, planned, and constructed to remain at one location and that is  
3           securely attached to its location, including residential dwellings, commercial  
4           and industrial buildings, farm structures, and wastewater systems.

5           ~~(12)~~(13) “Secretary” means the Secretary of Natural Resources or the  
6           Secretary’s authorized representative.

7           (14) “Structure” means a human-made construction installed in or on a  
8           property for occupancy or use.

9           (15) “Waste storage facility” means an impoundment made for the  
10           purpose of storing agricultural waste by constructing an embankment,  
11           excavating a pit or dugout, fabricating an in-ground or aboveground structure,  
12           or any combination thereof.

13           (16) “Water Quality Improvement Project” means projects specifically  
14           designed and implemented to reduce pollutant loading in accordance with the  
15           requirements of a Total Maximum Daily Load Implementation Plan or Water  
16           Quality Remediation Plan, or pursuant to a plan for reducing pollutant loading  
17           to a waterbody. These projects include:

18           (A) the retrofit of impervious surfaces in existence as of January 1,  
19           2019 for the purpose of addressing stormwater runoff;

20           (B) the replacement of stream-crossing structures necessary to  
21           improve aquatic organism passage, stream flow, or flood capacity;



1 ~~wetlands of the State, propose to the Board~~ specific wetlands to be designated  
2 as Class I wetlands, issue or deny permits pursuant to section 913 of this title  
3 and the rules authorized by this subdivision, ~~issue wetland determinations~~  
4 ~~pursuant to section 914 of this title~~, issue orders pursuant to section 1272 of  
5 this title, and in accordance with 3 V.S.A. chapter 25, adopt rules to address  
6 the following:

7 (A) ~~The identification of wetlands that are so significant they merit~~  
8 ~~protection. Any determination that a particular wetland is significant will~~  
9 ~~result from an evaluation of at least the following functions and values which a~~  
10 ~~wetland serves:~~

11 (i) ~~provides temporary water storage for flood water and storm~~  
12 ~~runoff;~~

13 (ii) ~~contributes to the quality of surface and groundwater through~~  
14 ~~chemical action;~~

15 (iii) ~~naturally controls the effects of erosion and runoff, filtering~~  
16 ~~silt, and organic matter;~~

17 (iv) ~~contributes to the viability of fisheries by providing spawning,~~  
18 ~~feeding, and general habitat for freshwater fish;~~

19 (v) ~~provides habitat for breeding, feeding, resting, and shelter to~~  
20 ~~both game and nongame species of wildlife;~~

21 (vi) ~~provides stopover habitat for migratory birds;~~





1 Sec. 4. 10 V.S.A. § 913 is amended to read:

2 (a) ~~Except for allowed uses adopted by the Department by rule, no person~~  
3 ~~shall conduct or allow to be conducted an activity in a significant wetland or~~  
4 ~~buffer zone of a significant wetland except in compliance with a permit,~~  
5 ~~conditional use determination, Except as provided in subsection (e) below, the~~  
6 ~~following alterations within a Class I or Class II wetland or its buffer zone are~~  
7 ~~prohibited without an individual permit, authorization under a general permit,~~  
8 or an order issued by the Secretary:

9 (1) dredging or removing soil or other material;

10 (2) draining, dewatering, or otherwise altering the hydrology of the  
11 wetland;

12 (3) filling; and

13 (4) cutting or removing vegetation.

14 (b) ~~A permit shall not be required under this section for:~~ Before issuing a  
15 permit or authorization, the Secretary shall consider the extent to which a  
16 wetland serves the following functions and values, and the extent to which the  
17 proposed alteration adversely affects the functions and values served by the  
18 wetland:

19 (1) ~~any activity that occurred before the effective date of this section~~  
20 ~~unless the activity occurred within:~~

21 (A) ~~an area identified as a wetland on the Vermont significant~~  
22 ~~wetlands inventory maps;~~

1           ~~(B) a wetland that was contiguous to an area identified as a wetland~~  
2           ~~on the Vermont significant wetlands inventory maps;~~

3           ~~(C) the buffer zone of a wetland referred to in subdivision (A) or (B)~~  
4           ~~of this subdivision (1); water storage for flood water and storm runoff;~~

5           ~~(2) any construction within a wetland that is identified on the Vermont~~  
6           ~~significant wetlands inventory maps or within the buffer zone of such a~~  
7           ~~wetland, provided that the construction was completed prior to February 23,~~  
8           ~~1992, and no action for which a permit is required under the rules of the~~  
9           ~~Department was taken or caused to be taken on or after February 23, 1992.~~  
10          protection of surface waters and groundwater;

11          (3) contribution to fish habitat;

12          (4) contribution to wildlife habitat, including resting, feeding, staging, or  
13          roosting habitat for migratory birds;

14          (5) designation as a wetland Natural Community Type, as recognized by  
15          the Nongame and Natural Heritage Inventory of the Vermont Fish and Wildlife  
16          Department;

17          (6) contribution to habitat for rare, threatened, and endangered species;

18          (7) provides or is likely to provide resources for education or scientific  
19          resources;

20          (8) recreational value and economic benefits;

21          (9) contribution to the open space and aesthetic character of the  
22          landscape; and

1           (10) erosion control through binding and stabilizing the soil.

2           (c) If the proposed alteration would result in an undue adverse impact to  
3           any of the functions and values listed in subsection (b), the Secretary shall not  
4           issue a permit under this section unless the applicant demonstrates that they  
5           have met the requirements of the wetland mitigation sequence set forth in rule.

6           (d) The Secretary may establish the necessary width of the buffer zone of  
7           any Class II wetland, pursuant to the rules of the Department. The buffer zone  
8           of any Class II wetland shall be 50 feet, unless otherwise determined by the  
9           Secretary.

10          (e) A permit shall not be required under this section for:

11           (1) The growing of food or crops in connection with farming, consistent  
12           with the following requirements:

13            (A) The growing of food or crops when conducted in connection with  
14            farming, on land that has been converted for the purpose of growing food or  
15            crops in ordinary rotation, provided that the conversion of a Class II wetland to  
16            an area used to grow food or crops is not exempt and shall require a wetland  
17            permit under this section.

18            (B) As used in this section, the growing of food or crops includes  
19            cultivating, harvesting, plowing, grazing, and seeding, but does not include the  
20            construction of any permanent structure located partially or wholly outside an  
21            agricultural production area and its associated buffer. A permanent structure  
22            includes a barn, bunker silo, waste storage facility, or sugarhouse.

1           (C) Land is no longer considered to be growing food or crops in  
2           ordinary rotation if it is converted to a use other than the growing of food or  
3           crops, or requires mechanized clearing or modifications to the hydrological  
4           regime to resume the growing of food or crops.

5           (2) Activities conducted entirely within an agricultural production area  
6           and its associated buffer.

7           (3) The implementation of best management practices on farms for the  
8           purpose of improving water quality, when those practices are implemented in  
9           compliance with the required agricultural practices or the Natural Resources  
10           Conservation Service Conservation Practice Standards. Exempt practices  
11           include:

12           (A) installation of fencing, including livestock watering systems;

13           (B) construction or maintenance of trails and walkways up to 16 feet  
14           wide, including attendant stream crossings;

15           (C) maintenance of existing trails and walkways, including attendant  
16           stream crossings, or maintenance, but not construction, of drainage ditches;

17           (D) maintenance of existing buildings and structures;

18           (E) maintenance, restoration, reconstruction, rehabilitation, or  
19           upgrading of existing roads in wetlands, provided that work on existing roads  
20           results in an overall net increase in road width of no more than 20 percent  
21           beyond the original road width;

22           (F) construction or maintenance of farm ponds;

1           (G) construction or maintenance of grassed waterways;  
2           (H) construction of stream crossings; and  
3           (I) the installation of manure pipelines or other temporary impacts  
4           that do not result in any change to the original grade of the wetland and that  
5           allow for the impacted area to revert back to wetland, including the  
6           reestablishment of the existing wetland vegetation, within one year.

7           (4) Forestry operations conducted in Class I or II wetlands and their  
8           buffer zones, consistent with the following requirements:

9           (A) The forestry operation shall be conducted in accordance with the  
10          Acceptable Management Practices for Maintaining Water Quality on Logging  
11          Jobs as adopted by the Department of Forests, Parks and Recreation. The  
12          removal of trees for other land uses, including commercial or residential  
13          development or conversion to agricultural production, is not exempt and may  
14          require a wetland permit.

15          (B) The forestry operation shall be conducted in compliance with the  
16          Management Guidelines for Deer Wintering Areas in Vermont, established  
17          jointly by the Department of Fish and Wildlife and the Department of Forests,  
18          Parks and Recreation, when occurring in wetlands or buffer zones containing  
19          deer wintering areas mapped by the Fish and Wildlife Department.

20          (C) Log landings shall be restricted to upland or buffer zones, except  
21          that landings not requiring the placement of fill may be located within Class II  
22          wetlands when the ground is frozen.

1           (D) Equipment maintenance and the storing or changing of oil,  
2           grease, or other petroleum products shall be restricted to log landings.

3           (E) The construction of new truck roads in buffer zones when  
4           necessary, and the maintenance, restoration, reconstruction, rehabilitation, or  
5           upgrade of existing truck roads in buffer zones, when used solely for forestry  
6           operations.

7           (F) Existing truck roads in wetlands may be maintained, restored,  
8           reconstructed, rehabilitated, or upgraded, provided that work on existing truck  
9           roads results in an overall net increase in road width of no more than 20  
10          percent beyond the original road width, that includes the combined total width  
11          of the shoulders, roadbed, and ditches.

12          (G) The construction of permanent buildings in Class I or II wetlands  
13          and buffer zones, and the construction of new truck roads in Class I or II  
14          wetlands, is not exempt and requires a wetland permit.

15          (H) The removal of beaver dams may be allowed to the extent  
16          necessary to allow for the use of existing logging roads or ongoing forestry  
17          operations.

18          (I) Forestry operations conducted in any Class I wetland or its buffer  
19          zones, or any Class II wetland specifically designated by the Secretary as  
20          providing habitat for any species on the state or federal list of threatened or  
21          endangered species, shall comply with a plan approved in writing by the  
22          Commissioner of Forests, Parks and Recreation.

1           (5) Any activity exempted by the Department in rule, adopted according  
2 to the provisions of 3 V.S.A. chapter 25.

3           (6) Any construction within a wetland that is identified on the Vermont  
4 significant wetlands inventory maps or within the buffer zone of such a  
5 wetland, provided that the construction was completed prior to February 23,  
6 1992, and no action for which a permit is required under the rules of the  
7 Department was taken or caused to be taken on or after February 23, 1992.

8       Sec. 5. 10 V.S.A. § 914 is amended to read:

9       § 914. ~~WETLANDS DETERMINATIONS~~

10       ~~(a) The Secretary may, upon a petition or on his or her own motion,~~  
11 ~~determine whether any wetland is a Class II or Class III wetland. Such~~  
12 ~~determinations shall be based on an evaluation of the functions and values set~~  
13 ~~forth in subdivision 905b(18)(A) of this title and the rules of the Department.~~

14       ~~(b) The Secretary may establish the necessary width of the buffer zone of~~  
15 ~~any Class II wetland as part of any wetland determination pursuant to the rules~~  
16 ~~of the Department.~~

17       ~~(c) The provisions of chapter 170 of this title shall apply to issuance of~~  
18 ~~determinations under this section.~~

19       ~~(d) [Repealed.]~~

20       ~~(e) The Secretary may recommend to the panel that a wetland be classified~~  
21 ~~as a Class I wetland under section 915 of this title. [Repealed.]~~



1 Sec. 6. 10 V.S.A. § 916 is amended to read:

2 § 916. ~~REVISION OF VERMONT SIGNIFICANT WETLANDS~~  
3 ~~INVENTORY MAPS~~

4 ~~The Secretary shall revise the Vermont significant wetlands inventory maps~~  
5 ~~to reflect wetland determinations issued under section 914 of this title and~~  
6 ~~rulemaking by the panel under section 915 of this title. [Repealed.]~~

7 Sec. 7. 10 V.S.A. § 918 is added to read:

8 § 918. COORDINATION; COOPERATION; FARMING ACTIVITIES IN  
9 WETLANDS

10 The Secretary of Natural Resources and the Secretary of Agriculture, Food  
11 and Markets shall adopt a memorandum of understanding to formalize a  
12 process for coordinating the review of whether farming or an activity related to  
13 farming requires a permit under this subchapter. The memorandum of  
14 understanding shall address: how coordination shall occur; the timing of  
15 coordination, including how coordination shall be conducted at the earliest  
16 possible time; when a permit may be required; how a person engaged in  
17 farming would obtain a permit; and enforcement of any required permit.

18 Sec. 8. ADOPTION OF MEMORANDUM OF UNDERSTANDING;  
19 FARMING IN WETLANDS

20 (a) On or before January 15, 2020, the Secretary of Natural Resources, after  
21 consultation with the Secretary of Agriculture, Food and Markets, shall submit  
22 a copy or draft of the memorandum of understanding required under 10 V.S.A.

1 § 918 to the Senate Committees on Agriculture and on Natural Resources and  
2 Energy and to the House Committees on Agriculture and Forestry and on  
3 Natural Resources, Fish, and Wildlife.

4 (b) On or before February 1, 2020, the Secretary of Natural Resources and  
5 the Secretary of Agriculture, Food and Markets shall adopt the memorandum  
6 of understanding required under 10 V.S.A. § 918.

7 Sec. 9. 3 V.S.A. § 2822(j) is amended to read:

8 (j) In accordance with subsection (i) of this section, the following fees are  
9 established for permits, licenses, certifications, approvals, registrations, orders,  
10 and other actions taken by the Agency of Natural Resources.

11 \* \* \*

12 (26) For individual conditional use determinations, for individual  
13 wetland permits, for general conditional use determinations issued under  
14 10 V.S.A. § 1272, or for wetland authorizations issued under a general permit,  
15 an administrative processing fee assessed under subdivision (2) of this  
16 subsection and an application fee of:

17 \* \* \*

18 (H) Maximum fee, for the construction of any Water Quality  
19 Improvement Project as defined in 10 V.S.A. § 902(13), in any Class II  
20 wetland or buffer, \$200.00 per application.

1       Sec. 10. REPEAL

2           2018 Acts and Resolves No. 194, Sec. 8a (sunset of maximum fee for  
3       manure pipeline in wetland) is repealed.

4       Sec. 11. PREVIOUSLY ISSUED WETLAND CLASSIFICATION

5           DECISIONS

6           (a) If a wetland was determined by the Secretary to be a Class II wetland  
7       prior to October 1, 2020, and a formal determination issued pursuant to 10  
8       V.S.A. § 914 was issued for the wetland less than five years prior to October 1,  
9       2020, that determination shall remain in effect and the wetland shall be  
10       considered a Class II wetland until five years from the effective date of  
11       issuance of the formal determination.

12           (b) If a wetland was determined by the Secretary to be a Class III wetland  
13       five years prior to October 1, 2020, and that determination was documented  
14       either as a formal or preliminary determination, that determination shall remain  
15       in effect until five years from the date of that decision.

16       Sec. 12. WETLAND SCIENTIST LICENSURE REQUIREMENTS

17           The Agency of Natural Resources shall commence a study of potential  
18       approaches to licensing and certifying qualified wetlands scientists, including  
19       developing a set of standard qualifications required for all professional wetland  
20       scientists. On or before January 1, 2014, the Agency shall submit a report to  
21       the Legislature summarizing its findings and providing recommendations for  
22       the development of a professional certification program for wetland scientists.



1                    (iv) horticultural, viticultural, or orchard crops are grown; or

2                    (v) livestock are pastured.

3                    (B) “Cropland” shall not mean land on which trees are grown for  
4 silvicultural or timber purposes.

5                    (10) “Surface inlet” means any aboveground structure that receives,  
6 collects, or redirects water from cropland to an underground drainage, a ditch,  
7 or a surface water.

8                    Sec. 15. 6 V.S.A. § 4817 is added to read:

9                    § 4817. SURFACE INLETS; REPORT ON ELIMINATION; INSPECTION

10                    (a) As part of an annual report or certification required to be submitted to  
11 the Secretary under this chapter or rules adopted under this chapter, the owner  
12 or operator of a large farm, medium farm, or certified small farm shall notify  
13 the Secretary:

14                    (1) whether a surface inlet is located on the farm;

15                    (2) whether the surface inlet:

16                    (A) has been removed, sealed, or otherwise eliminated; or

17                    (B) is permitted by the Agency of Natural Resources under 10 V.S.A.  
18 chapter 47; and

19                    (3) if the surface inlet was removed, sealed, or otherwise eliminated, the  
20 date of removal, sealing, or elimination.

21                    (b) Within one year of a report under subsection (a) of this section that a  
22 surface inlet is located on a large farm, medium farm, or certified small farm,

1 the Secretary shall conduct an inspection of the farm to determine if the surface  
2 inlet is permitted by the Agency of Natural Resources or has been removed,  
3 sealed, or otherwise eliminated. If the surface inlet is not permitted and has  
4 not been removed, sealed, or otherwise eliminated, the Secretary shall contact  
5 the Agency of Natural Resources pursuant to the memorandum of  
6 understanding under section 4810 of this title regarding implementation and  
7 enforcement of the agricultural water quality program.

8 Sec. 16. REPORT ON ELIMINATION OF SURFACE INLETS

9 On or before March 15, 2020, the Secretary of Agriculture, Food and  
10 Markets, after consultation with the Agency of Natural Resources, shall submit  
11 to the Senate Committee on Natural Resources and Energy and the House  
12 Committee on Natural Resources, Fish, and Wildlife a report regarding the  
13 removal, sealing, or elimination of surface inlets that discharge waste to State  
14 waters on or before January 1, 2019. The report shall provide:

15 (1) the number of farms reporting the presence of a surface inlet under  
16 6 V.S.A. § 4817;

17 (2) the number of surface inlets reported removed, sealed, or otherwise  
18 eliminated;

19 (3) the number of surface inlets reported as permitted;

20 (4) the number of inspections conducted by the Secretary of Agriculture,  
21 Food and Markets of farms reporting surface inlets;

