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H.543

Introduced by Representatives Dolan of Waitsfield, Anthony of Barre City,  
Bluemle of Burlington, Bos-Lun of Westminster, Brumsted of  
Shelburne, Campbell of St. Johnsbury, McCarthy of St. Albans  
City, McCullough of Williston, Mrowicki of Putney, Ode of  
Burlington, Sheldon of Middlebury, Squirrell of Underhill, and  
Yantachka of Charlotte

Referred to Committee on

Date:

Subject: Conservation and development; wetlands protection and water  
resources management; State policy; net gain of wetlands

Statement of purpose of bill as introduced: This bill proposes to establish as  
State policy that wetlands shall be regulated and managed by the State to  
produce a net gain of wetlands acreage. The bill would require the Secretary  
of Natural Resources to amend the Vermont Wetlands Rules to incorporate the  
net gain policy. In addition, the bill would require the Vermont Significant  
Wetlands Inventory maps to be updated and revised annually.

An act relating to regulation of wetlands in the State

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

2 Sec. 1. FINDINGS

3 The General Assembly finds:

4 (1) Wetlands provide critical environmental, public safety, and  
5 economic benefits. Because of the critical importance of wetlands to people  
6 and the natural environment on which we depend, the goal of the State of  
7 Vermont must be the protection and restoration of wetlands.

8 (2) Wetlands, whether natural, restored, or created, serve a variety of  
9 functions and values beneficial to the general public and to the environment,  
10 including climate resilience in terms of flood resiliency and carbon storage,  
11 water quality protection, wildlife and aquatic vegetation habitat, groundwater  
12 recharge, erosion control, carbon storage, and recreational and educational  
13 opportunities.

14 (3) Wetlands comprise just four percent of Vermont's land area, but  
15 they offer critical habitat for 35 percent of Vermont's threatened and  
16 endangered plant species and 21 percent of imperiled animals. Restoring  
17 wetlands in the Vermont portion of the Lake Champlain Basin could achieve  
18 15 percent of the pollution reduction goals required for the Lake by the U.S.  
19 Environmental Protection Agency.

20 (4) A study by the Trust for Public Land found that Vermont's wetlands  
21 provide an estimated \$590.00 per acre annually in natural goods and services,

1 such as flood protection, water quality enhancement, and wildlife habitat. The  
2 same study found that for every State dollar invested in conservation of our  
3 forests and wetlands, \$9.00 worth of natural goods and services is returned to  
4 Vermonters.

5 (5) Wetlands buffer human communities from environmental threats,  
6 such as more intense and more frequent weather events due to climate change.  
7 The 2018 Vermont State Hazard Mitigation Plan highlights the importance of  
8 wetlands for reducing flood risks to communities.

9 (6) State policies and funding programs should set a baseline of  
10 regulatory protections while also incentivizing farmers, foresters, and other  
11 landowners to restore wetlands and compensate them for maintaining and  
12 restoring the extensive ecosystem services that wetlands provide.

13 (7) The greatest threats to wetlands are development, draining and  
14 clearing, invasive species, timber harvesting without best management  
15 practices, and climate change that may alter hydrologic cycles and ecosystem  
16 functions.

17 (8) Since European colonization, scientists estimate that Vermont has  
18 lost at least one-third of its wetlands.

19 (9) Alterations to wetlands disturb their natural ability to store water and  
20 carbon, adversely affect flood resiliency, reduce their value as habitat, limit

1 their ability to retain nutrients and sediment, and impact public health and  
2 welfare.

3 (10) Any changes to the State statutes, rules, or guidelines for wetland  
4 protection and restoration must be guided by science and have a net  
5 environmental benefit.

6 (11) The Department of Environmental Conservation has adopted  
7 National Wetlands Inventory (NWI) Plus mapping, which uses the best  
8 available technology and relies on trained image analysts to identify and  
9 classify wetlands and deep-water habitats from aerial imagery. NWI Plus  
10 enhances traditional wetlands inventory mapping by using hydrogeomorphic  
11 attributes for identifying landscape position, landform, water flow path, and  
12 waterbody type. These enhancements increase the functionality of NWI data  
13 for better characterizing wetlands, for predicting wetlands functions at the  
14 landscape or watershed level, and for assessing the impact of wetland changes  
15 and functions.

16 Sec. 2. 10 V.S.A. § 901 is amended to read:

17 § 901. WATER RESOURCES AND WETLANDS MANAGEMENT

18 POLICY

19 It is hereby declared to be the policy of the State that:



1 within the State and submitted to the Agency of Natural Resources as part of a  
2 permit application. The Wetland Advisory layer shall include integration of  
3 any additional town specific inventories performed by consultants on the  
4 Agency's Wetland Consultant List if the consultant has presented the map to a  
5 municipality or the Agency of Natural Resources.

6 (b) The Secretary of Natural Resources shall provide public notice of  
7 changes to the VSWI map in the watershed where changes to the map are  
8 made by posting notice in each town clerk's office in the municipality where  
9 wetland map changes are proposed and by publishing notice of the changes in  
10 local newspapers and other media sources within the municipality. The  
11 Secretary shall not be required to provide notification to individual persons.

12 (c) On or before January 1, 2028, the Secretary of Natural Resources shall  
13 complete High Quality National Wetlands Inventory (NWI) Plus level  
14 mapping for all of the tactical basins in the State. The high-quality mapping  
15 shall include a ground truthing component that is the best available practice but  
16 shall not be less accurate than the methodology currently applied by the  
17 Secretary.

18 (d) The NWI Plus level mapping shall be compiled in the form of an  
19 FGDC-compliant GIS shapefile with supporting attributes, and this data shall  
20 be uploaded to the Agency of Natural Resources' Natural Resources Atlas for  
21 public access and viewing. The results of each NWI Plus Basin Mapping

1 Project, including additional acres mapped, will be detailed in the annual  
2 Wetlands Program Report required under section 919 of this title.

3 (e) Once all tactical basins are mapped, NWI Plus mapping updates would  
4 occur on a five-year cycle simultaneously with updates to the corresponding  
5 tactical basin plan.

6 (f) To assist in funding the mapping, the Secretary of Natural Resources  
7 shall seek to leverage State funds with federal funds and private funding, with  
8 assistance from nongovernmental partners if possible. If the Secretary of  
9 Natural Resources does not obtain funding from federal funds or private  
10 funding, the Secretary shall document any effort prior to ongoing effort to  
11 obtain federal or private funding.

12 Sec. 4. 10 V.S.A. §§ 918 and 919 are added to read:

13 § 918. NET GAIN OF WETLANDS; STATE GOAL; RULEMAKING

14 (a) On or before July 1, 2023, the Secretary of Natural Resources shall  
15 amend the Vermont Wetlands Rules to clarify that the goal of wetlands  
16 regulation and management in the State is the net gain of wetlands to be  
17 achieved through protection of existing wetlands and restoration of previously  
18 developed wetlands. As a condition of a permit for activity in a wetland, the  
19 Secretary shall require the net gain of wetlands.

20 (b) The Vermont Wetlands Rules shall prioritize the protection of existing  
21 intact wetlands. Where permitted activity within a wetland will cause adverse

1 effects that cannot be avoided, the Secretary shall mandate that the permit  
2 applicant restore, enhance, or create wetlands or buffers to compensate for  
3 adverse effects on a wetland. The amount of wetlands to be restored,  
4 enhanced, or created shall be calculated, at a minimum, by determining the  
5 acreage or square footage of wetlands adversely affected by the permitted  
6 activity and multiplying the number of adversely affected acres or square feet  
7 by two, to result in ratio of 2:1 restoration to disturbance. Establishment of a  
8 buffer zone contiguous to a wetland shall not substitute for the restoration,  
9 enhancement, or creation of wetlands. Adverse effects on wetland buffers  
10 shall also be restored, enhanced, or created at a ratio of 2:1 restoration to  
11 disturbance, provided that restoration, enhancement, or creation of a wetland  
12 buffer shall not substitute for adverse effects on a wetland. Restoration,  
13 enhancement, or creation of adverse effects to a wetland or wetland buffer  
14 shall be managed separately.

15 (c) At a minimum, the modifications to the Wetlands Rules shall:

16 (1) Require an applicant for a wetlands permit to restore and enhance  
17 any loss of wetlands caused by the project that is subject to the permit  
18 application.

19 (2) Incorporate the net gain rule into existing permitting requirements  
20 for wetlands.



1           (3) Establish a set of parameters and ratios for the permittee-designed  
2           restored wetlands, at not less than a 2:1 ratio, which shall include, at a  
3           minimum, the following factors:

4                   (A) the existing level of wetland function at the site prior to  
5                   mitigation or restoration of wetlands;

6                   (B) the amount of wetland and wetland function lost as a result of the  
7                   project;

8                   (C) how the wetland amounts and functions will be restored at the  
9                   proposed compensation site;

10                   (D) the length of time before the compensation site will be fully  
11                   functional;

12                   (E) the risk that the compensation project may not succeed;

13                   (F) the differences in the location of the adversely affected wetland  
14                   and the wetland subject to compensation that affect the services and values  
15                   offered; and

16                   (G) the requirement that permittees conduct five years of  
17                   postrestoration monitoring for the restored wetlands, at which time the Agency  
18                   can decide if further action is needed.

19           (d) When amending the Vermont Wetlands Rules under this section, the  
20           Secretary shall establish a Vermont in-lieu fee (ILF) compensation program for  
21           wetlands impacts that may be authorized as compensation for an adverse effect

1 on a wetland when the permittee cannot achieve restoration. The Secretary  
2 may implement a Vermont ILF compensation program through agreements  
3 with third-party entities such as the U.S. Army Corps of Engineers or  
4 environmental organizations, provided that any ILF monetary compensation  
5 authorized under the rules shall be expended on restoration or conservation  
6 projects within the State and within the same watershed of the adversely  
7 affected wetland when possible.

8 § 919. WETLANDS PROGRAM REPORT

9 On or before January 1, 2023 and annually thereafter, the Agency of Natural  
10 Resources shall submit to the House Committee on Natural Resources, Fish,  
11 and Wildlife and to the Senate Committee on Natural Resources and Energy a  
12 report on the status of the wetlands in the State. The report shall include:

13 (1) the acreage, location, and vegetative composition of Class II  
14 wetlands and buffers impacted, the Class II wetlands and buffers that were  
15 restored, the Class II wetlands converted to other uses, including permanent  
16 development and cropland, and an assessment of the functionality of any  
17 created wetlands over the past year compared with the previous five-year  
18 period;

19 (2) an updated mitigation summary of the extent of wetlands restored  
20 on-site compared with compensation performed off-site, in-lieu fees paid, or  
21 conservation;

1           (3) the number of site visits and technical assistance calls conducted by  
2           the Agency of Natural Resources, the number of permits processed by the  
3           Agency, and any enforcement actions that were taken by the Agency or the  
4           Attorney General's Office in the previous year;

5           (4) an analysis of historical trends of wetlands, including data showing  
6           sectors of wetland impact, including fill, land clearing for structures, land  
7           clearing for access, and renewable energy development;

8           (5) the results of each NWI Plus Basin Mapping Project, including  
9           additional acres mapped, dominant vegetative composition, connected  
10          tributaries, locations of confirmed ground truthing, if applicable, and any other  
11          hydrologic soil or vegetative observations or trends noted; and

12          (6) relevant updates related to Class I and Class II wetlands to include  
13          additional wetlands identified under these categories, their composition and  
14          general characteristics, potential threats, patterns of use, and other unique  
15          features.

16          Sec. 5. 10 V.S.A. § 1274(a) is amended to read:

17          (a) Notwithstanding any other provision or procedure set forth in this  
18          chapter, if the Secretary finds that any person has discharged or is discharging  
19          any waste or damaging the ecological functions of wetlands in violation of this  
20          chapter or chapter 37 of this title, or that any person has failed to comply with  
21          any provisions of any order or permit issued in accordance with this chapter or

1 chapter 37 of this title, the Secretary may bring suit in the Superior Court in  
2 any county where the discharge, damage to wetlands, or noncompliance has  
3 occurred to enjoin the discharge ~~and to~~, obtain compliance, and mandate  
4 restoration of damaged wetlands. The suit shall be brought by the Attorney  
5 General in the name of the State. The court may issue a temporary injunction  
6 or order in any such proceedings and may exercise all the plenary powers  
7 available to it in addition to the power to:

8 (1) Enjoin future discharges.

9 (2) Order the design, construction, installation, or operation of pollution  
10 abatement facilities or alternate waste disposal systems.

11 (3) Order the restoration of damaged wetlands. Wetlands damaged in  
12 violation of chapter 37 of this title may be ordered restored, enhanced, or  
13 created.

14 (4) Order the removal of all wastes discharged and the restoration of  
15 water quality.

16 ~~(4)~~(5) Fix and order compensation for any public property destroyed,  
17 damaged, or injured. Compensation for fish taken or destroyed shall be  
18 deposited into the Fish and Wildlife Fund.

19 ~~(5)~~(6) Assess and award punitive damages.

20 ~~(6)~~(7) Levy civil penalties not to exceed \$10,000.00 a day for each day  
21 of violation.

1           ~~(7)~~(8) Order reimbursement to any agency of federal, State, or local  
2 government from any person whose discharge caused governmental  
3 expenditures.

4           Sec. 6. APPROPRIATIONS

5           In addition to other funds appropriated to the Agency of Natural Resources  
6 in fiscal year 2023, the amount of \$1,000,000.00 shall be appropriated from the  
7 General Fund, of which \$500,000.00 shall be used to fund wetlands mapping  
8 required under this act, and \$500,000.00 shall be used to hire additional  
9 Agency of Natural Resources staff as necessary to comply with the  
10 requirements of this act.

11          Sec. 7. EFFECTIVE DATE

12          This act shall take effect on passage.