

1 H.30

2 Introduced by Representatives Sheldon of Middlebury and Dolan of Waitsfield

3 Referred to Committee on

4 Date:

5 Subject: Conservation and development; wetlands protection and management;

6 net gain; designation

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

13 An act relating to the regulation of wetlands

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

15 Sec. 1. FINDINGS

16 The General Assembly finds:

17 (1) Wetlands provide critical environmental, public safety, and
18 economic benefits. Because of the critical importance of wetlands to
19 individuals and the natural environment on which we depend, the goal of the
20 State of Vermont must be the protection and restoration of wetlands.

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

7 (3) Wetlands comprise just four percent of Vermont's land area, but
8 they offer critical habitat for 35 percent of Vermont's threatened and
9 endangered plant species and 21 percent of imperiled animals. Restoring
10 wetlands in the Vermont portion of the Lake Champlain Basin could achieve
11 15 percent of the pollution reduction goals required for the Lake by the U.S.
12 Environmental Protection Agency.

13 (4) A study by the Trust for Public Land found that Vermont's wetlands
14 provide an estimated \$590.00 per acre annually in natural goods and services,
15 such as flood protection, water quality enhancement, and wildlife habitat. The
16 same study found that for every State dollar invested in conservation of our
17 forests and wetlands, \$9.00 worth of natural goods and services is returned to
18 Vermonters.

19 (5) Wetlands buffer human communities from environmental threats,
20 such as more intense and more frequent weather events due to climate change.

1 The 2018 Vermont State Hazard Mitigation Plan highlights the importance of
2 wetlands for reducing flood risks to communities.

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

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

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

13 (9) Alterations to wetlands disturb their natural ability to store water and
14 carbon, adversely affect flood resiliency, reduce their value as habitat, limit
15 their ability to retain nutrients and sediment, and impact public health and
16 welfare.

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

20 (11) The Department of Environmental Conservation has adopted
21 National Wetlands Inventory (NWI) Plus mapping, which uses the best

1 available technology and relies on trained image analysts to identify and
2 classify wetlands and deep-water habitats from aerial imagery. NWI Plus
3 enhances traditional wetlands inventory mapping by using hydrogeomorphic
4 attributes for identifying landscape position, landform, water flow path, and
5 waterbody type. These enhancements increase the functionality of NWI data
6 for better characterizing wetlands, for predicting wetlands functions at the
7 landscape or watershed level, and for assessing the impact of wetland changes
8 and functions.

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

10 § 901. WATER RESOURCES AND WETLANDS MANAGEMENT

11 POLICY

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

13 (1) the water resources of the State shall be protected, regulated, and,
14 where necessary, controlled under authority of the State in the public interest
15 and to promote the general welfare;

16 (2) the wetlands of the State shall be protected, regulated, and restored
17 so that Vermont achieves a net gain of wetlands acreage; and

18 (3) regulation and management of the water resources of the State,
19 including wetlands, should be guided by science, and authorized activities in
20 water resources and wetlands should have a net environmental benefit to the
21 State.

1 Sec. 3. 10 V.S.A. § 916 is amended to read:

2 § 916. ~~REVISION~~ UPDATE 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.~~

7 (a) On or before January 1, 2025, and annually thereafter, the Agency of
8 Natural Resources shall update the Vermont Significant Wetlands Inventory
9 (VSWI) maps and the Wetlands Advisory mapping layers for the Agency of
10 Natural Resources' Natural Resources Atlas and as a shapefile on the Vermont
11 Geodata Portal. The annual updates to the VSWI shall include integration of
12 georeferenced shapefiles or similar files for all verified delineations performed
13 within the State and submitted to the Agency of Natural Resources as part of a
14 permit application, as well as wetlands determination issued under section 914
15 of this title and rulemaking conducted pursuant to section 915 of this title. The
16 Wetland Advisory layer shall include integration of any additional town
17 specific inventories performed by consultants on the Agency's Wetland
18 Consultant List if the consultant has presented the map to a municipality or the
19 Agency of Natural Resources.

20 (b) The Secretary of Natural Resources shall provide public notice of
21 changes to the VSWI map in the watershed where changes to the map are

1 made by posting notice in each town clerk's office in the municipality where
2 wetland map changes are proposed, by publishing notice of the changes in
3 local newspapers and other media sources within the municipality, and by
4 posting notice of the updated map to the Environmental Notice Bulletin. The
5 Secretary shall not be required to provide notification to individual persons.

6 (c) On or before January 1, 2029, the Secretary of Natural Resources shall
7 complete High Quality National Wetlands Inventory (NWI) Plus level
8 mapping for all of the tactical basins in the State. The high-quality mapping
9 shall include a ground truthing component that is the best available practice.

10 (d) Once all tactical basins are mapped, updates shall occur on a five-year
11 cycle simultaneously with updates to the corresponding tactical basin plan.

12 (e) To assist in funding the mapping, the Secretary of Natural Resources
13 shall seek to leverage State funds with federal funds and private funding, with
14 assistance from nongovernmental partners if possible. If the Secretary of
15 Natural Resources does not obtain funding from federal funds or private
16 funding, the Secretary shall document any effort prior to ongoing effort to
17 obtain federal or private funding.

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

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

20 (a) On or before July 1, 2024, the Secretary of Natural Resources shall
21 amend the Vermont Wetlands Rules to clarify that the goal of wetlands

1 regulation and management in the State is the net gain of wetlands to be
2 achieved through protection of existing wetlands and restoration of previously
3 developed wetlands. As a condition of a permit for activity in a wetland, the
4 Secretary shall require the net gain of wetlands.

5 (b) The Vermont Wetlands Rules shall prioritize the protection of existing
6 intact wetlands. Where permitted activity within a wetland will cause adverse
7 effects that cannot be avoided, the Secretary shall mandate that the permit
8 applicant restore, enhance, or create wetlands or buffers to compensate for
9 adverse effects on a wetland. The amount of wetlands to be restored,
10 enhanced, or created shall be calculated, at a minimum, by determining the
11 acreage or square footage of wetlands adversely affected by the permitted
12 activity and multiplying the number of adversely affected acres or square feet
13 by two, to result in ratio of 2:1 restoration to disturbance. Establishment of a
14 buffer zone contiguous to a wetland shall not substitute for the restoration,
15 enhancement, or creation of wetlands. Adverse effects on wetland buffers
16 shall also be restored, enhanced, or created at a ratio of 2:1 restoration to
17 disturbance, as established on a case-by-case, per project basis.

18 (c) At a minimum, the Wetlands Rules shall be revised to:

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

1 (2) Incorporate the net gain rule into existing general permits and into
2 requirements for permits issued after July 1, 2024.

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

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

8 (B) the amount of wetland and wetland function lost as a result of the
9 project;

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

12 (D) the length of time before the compensation site will be fully
13 functional;

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

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

18 (G) the requirement that permittees conduct five years of post-
19 restoration monitoring for the restored wetlands, at which time the Agency can
20 decide if further action is needed.

1 (d) When amending the Vermont Wetlands Rules under this section, the
2 Secretary shall establish a Vermont in-lieu fee (ILF) compensation program for
3 wetlands impacts that may be authorized as compensation for an adverse effect
4 on a wetland when the permittee cannot achieve restoration. The Secretary
5 may implement a Vermont ILF compensation program through agreements
6 with third-party entities such as the U.S. Army Corps of Engineers or
7 environmental organizations, provided that any ILF monetary compensation
8 authorized under the rules shall be expended on restoration, reestablishment,
9 enhancement, or conservation projects within the State at the HUC 12 level of
10 the adversely affected wetland when practicable.

11 § 919. WETLANDS PROGRAM REPORT

12 On or before April 30, 2024 and annually thereafter, the Agency of Natural
13 Resources shall submit to the House Committee on Environment and Energy
14 and to the Senate Committee on Natural Resources and Energy a report on the
15 status of the wetlands in the State. The report shall include:

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

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

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

8 (4) an analysis of historical trends of wetlands, including data analyzing
9 the projects for which wetland permits were issued by sector;

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

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

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

19 (a) Notwithstanding any other provision or procedure set forth in this
20 chapter, if the Secretary finds that any person has discharged or is discharging
21 any waste or damaging the ecological functions of wetlands in violation of this

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

10 (1) Enjoin future discharges.

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

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

16 (4) Order the removal of all wastes discharged and the restoration of
17 water quality.

18 ~~(4)~~(5) Fix and order compensation for any public property destroyed,
19 damaged, or injured or any aquatic or terrestrial biota harmed or destroyed.

20 Compensation for fish taken or destroyed shall be deposited into the Fish and
21 Wildlife Fund.

1 ~~(5)~~(6) Assess and award punitive damages.

2 ~~(6)~~(7) Levy civil penalties not to exceed \$10,000.00 a day for each day
3 of violation.

4 ~~(7)~~(8) Order reimbursement to any agency of federal, State, or local
5 government from any person whose discharge caused governmental
6 expenditures.

7 Sec. 6. APPROPRIATIONS

8 In addition to other funds appropriated to the Agency of Natural Resources
9 in fiscal year 2024, the amount of \$1,000,000.00 shall be appropriated from the
10 General Fund, of which \$500,000.00 shall be used to fund wetlands mapping
11 required under this act, and \$500,000.00 shall be used to hire additional
12 Agency of Natural Resources staff as necessary to comply with the
13 requirements of this act.

14 Sec. 7. EFFECTIVE DATE

15 This act shall take effect on July 1, 2023.